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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0563–AC56

Highly Erodible Land Conservation and Wetland Conservation; Conforming Amendment

AGENCY: Office of the Secretary and Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the United States Department of Agriculture regulations to conform to the changes regarding conservation compliance made by the Federal Crop Insurance Corporation (FCIC) to its regulations in Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Basic Provisions; and Common Crop Insurance Policy Basic Provisions. These changes will provide more flexibility for conservation compliance determinations; reduce burdens on policyholders; and will allow the conservation compliance certification process for crop insurance to be administered more consistently with the practices of the Farm Service Agency (FSA).

DATES: This rule is effective December 12, 2017.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Risk Management Agency, telephone (816) 926–7730; Joe Fuchtman, Farm Service Agency, telephone (202) 260–9146; or Jason Outlaw, Natural Resource Conservation Service, telephone (202) 720–7838.

SUPPLEMENTARY INFORMATION:

Background

Recently, FCIC published a final rule in the **Federal Register**, titled ''General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions,'' that included changes to remove the June 1 deadline prior to the July 1 reinsurance year for a Form AD–1026 conservation compliance certification to be on file with FSA related to ineligibility for federal crop insurance premium subsidies. The same June 1 deadline was also included in the USDA regulations in 7 CFR part 12 for Highly Erodible Land Conservation and Wetland Conservation provisions (also known as conservation compliance provisions). The FCIC final rule removed the June 1 deadline from the regulations for Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy Basic Provisions and instead requires the AD–1026 to be filed with FSA for the reinsurance year by the premium billing date unless an exception applies.

USDA is amending the Highly Erodible Land Conservation and Wetland Conservation provisions to conform to the changes to the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy Basic Provisions regarding conservation compliance.

The specific changes to the Highly Erodible Land Conservation and Wetland Conservation regulation include removing the date of June 1 from the conservation compliance provisions and adding a reference to the premium billing date. Because the June 1 date is being removed, USDA is also revising the exception for farmers who began farming after June 1 to instead refer to producers who meet the Risk Management Agency's conditions for farmers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD–1026.

These changes will provide more flexibility for FSA conservation compliance determinations, reduce burdens on policyholders and will allow the conservation compliance certification process for crop insurance to be administered more consistently with the way it is administered for other USDA programs while maintaining conformance to the Conservation Compliance provisions mandated by the Congress in the Agricultural Act of 2014.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

USDA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, USDA will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

USDA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is a conforming amendment to a final rule published by FCIC that states the Federal crop insurance program is the same for all producers regardless of the size of their farming operation. For instance, all producers are required to file an AD–1026 with FSA to be eligible for premium subsidy. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 12

Crop insurance, Reporting and recordkeeping requirements, Soil conservation.

Final Rule

Accordingly, as set forth in the preamble, USDA amends 7 CFR part 12 as follows:

PART 12—HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION

■ 1. The authority citation for 7 CFR part 12 continues to read as follows:

Authority: 16 U.S.C. 3801, 3811–12, 3812a, 3813–3814, and 3821–3824.

■ 2. Amend § 12.13 by revising paragraph (b) to read as follows:

§ 12.13 Special Federal crop insurance premium subsidy provisions.

* * * * *

(b) *Ineligibility for failing to certify compliance.* Subject to paragraph (b)(2) of this section, failing to certify compliance as specified in § 12.7 will result in ineligibility as follows:

(1) A Form AD–1026, or successor form, for the person must be filed with FSA for the reinsurance year in order for the person to be eligible for any Federal crop insurance premium subsidies for the reinsurance year. Persons will be ineligible for Federal crop insurance premium subsidy on their crop insurance policy if form AD–1026, or successor form, has not been filed with FSA for the reinsurance year by the premium billing date for their Federally-reinsured crop insurance policy.

(2) A person that has not filed an AD–1026 for the reinsurance year by the premium billing date may be eligible for premium subsidy for the reinsurance year if they provide information necessary for the person's filing of a Form AD–1026 if the person:

(i) Is unable to file a Form AD–1026 due to circumstances beyond the person's control, as determined by FSA; or

(ii) Files a Form AD–1026 in good faith and FSA subsequently determines that additional information is needed, but the person is unable to comply due to circumstances beyond the control of the person.

(3) A person who does not have Form AD–1026, or successor form, on file with FSA for the reinsurance year may be eligible for Federal crop insurance premium subsidy for the initial reinsurance year if the person can demonstrate they meet RMA's conditions for new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD–1026.

* * * * *

Dated: December 1, 2017.

Stephen L. Censky,

Deputy Secretary.

[FR Doc. 2017–26736 Filed 12–11–17; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0143; Airspace Docket No. 17–AGL–5]

Amendment of Class E Airspace, Stevens Point, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register**

of November 1, 2017 that modifies Class E airspace extending upward from 700 feet above the surface at Stevens Point Municipal Airport, Stevens Point, WI, to accommodate new standard instrument approach procedures for instrument flight rules operations at the airport. The FAA identified that the latitude coordinate was incorrect.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (82 FR 50503, November 1, 2017) Docket No. FAA–2017–0143, modifying Class E airspace extending upward from 700 feet above the surface at Stevens Point Municipal Airport, Stevens Point, WI.

Subsequent to publication, the FAA found that the geographic coordinates for the airport were incorrect. This action amends the latitude coordinate in the airspace designation.

Class E airspace designations are published in paragraph 6005, respectively, of FAA Order 7400.11B, dated August 2, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of November 1, 2017 (82 FR 50503) FR Doc. 2017–23434, Amendment of Class E Airspace; Stevens Point, WI, is corrected as follows:

§ 71.1 [Amended]

AGL WI E5 Stevens Point, WI [Corrected]

■ On page 50504 column 1, line 59, remove ''Lat. 44°32′43″ N.'' and add in its place ''Lat. 44°32′42″ N.''

Issued in Fort Worth, Texas, on December 1, 2017.

Christopher L. Southerland,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–26656 Filed 12–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 891, 960, and 982

[Docket No. FR 5743–I–04]

RIN 2577–AJ36

Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America's Surface Transportation (FAST) Act

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Interim final rule.

SUMMARY: HUD published a final rule on March 8, 2016, containing changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and various multifamily housing (MFH) rental assistance programs. The goal of the final rule was to reduce the administrative burden on public housing agencies (PHAs) and MFH owners, including changes pertaining to annual income reviews in the HCV, PH, and Section 8 Project-Based Rental Assistance (PBRA) programs for families with sources of fixed income. On December 4, 2015, the President signed the Fixing America's Surface Transportation Act (FAST Act) into law. The law contained language that allowed PHAs and owners to conduct full income recertification for families with 90 percent or more of their income from fixed-income every 3 years instead of annually. This interim final rule amends the regulatory language to implement the FAST Act and to align the current regulatory flexibilities with those provided in the FAST Act. In addition, this interim final rule seeks to extend to certain MFH programs some of the streamlining changes that were proposed for and made only to the HCV and PH programs.

DATES: *Effective date:* March 12, 2018.

Comment due date: January 11, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* In addition, all properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (the phone numbers are not toll-free):

Multifamily Housing programs: Katherine Nzive, Director, Program Administration Office, Asset Management and Portfolio Oversight, 202–708–3000.

Housing Choice Voucher and Public Housing programs: Becky Primeaux,

Director, Housing Voucher Management and Occupancy Division, 202–402–6050 or Monica Shepherd, Director, Public Housing Management and Occupancy, 202–402–4059.

Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). The above-listed contacts may also be reached by mail at the following address: U.S. Department of Housing and Urban Development; 451 7th Street SW, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

On January 6, 2015, at 80 FR 423, HUD issued a proposed rule to implement several statutory changes made in the Department of Housing and Urban Development Appropriations Act, 2014 and also make multiple administrative streamlining changes across several HUD programs. In that proposed rule, some of these additional streamlining changes applied only to the HCV and PH programs, not MFH programs. Given feedback on the rule, HUD is issuing this interim final rule to expand some of the flexibilities—namely, flexibilities related to utility reimbursements and asset declarations that were finalized for the HCV and PH programs in a March 8, 2016, final rule, at 81 FR 12354—to housing assisted under the following MFH programs, while seeking public feedback on that expansion:

(1) Section 8 Project-Based Rental Assistance (PBRA), including projects undergoing Mark-to Market debt restructuring under the Multifamily Assisted Housing Reform and Affordability Housing Act.

(2) Section 202 of the Housing Act of 1959 (both before and after section 202 was amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act).

(3) Section 811 of the Cranston-Gonzalez National Affordable Housing Act.

In addition, another of the provisions in the March 8, 2016, final rule, which applied to the HCV, PH, and above-listed MFH programs, allowed PHAs and multifamily owners to streamline income recertification procedures for families with income that comes from fixed-income sources. The new regulatory provision allowed PHAs and owners to only require third-party documentation for fixed-income sources every 3 years. In the intermediate years the PHA or owner could apply a previously determined or verified cost of living adjustment (COLA) or interest rate adjustment specific to each source of fixed income.

Prior to the issuance of the final rule, on December 4, 2015, the President signed the FAST Act (Pub. L. 114–94). While primarily a transportation law, section 78001 of the FAST Act also amended the United States Housing Act of 1937 to allow PHAs and owners in the HCV, PH, and PBRA programs to eliminate annual income reviews in some years by applying a COLA determined by the Secretary to fixed-income sources for families with incomes that are made up of at least 90 percent fixed income. The PHA or owner is not required to verify non-fixed income amounts in years where no fixed-income review is required, but is still required to use third-party documentation for a full income recertification every 3 years.

This interim final rule not only implements the statutory provisions of the FAST Act, but it also modifies the earlier streamlining regulations so that the procedures for families meeting the 90 percent fixed-income threshold of the FAST Act are as similar as possible to those for families who receive some, but less than 90 percent, of their income from fixed-income sources.

II. Summary of This Interim Final Rule

Streamlined Certification of Fixed Income (§§ 5.233, 5.657, 960.257, and 982.516)

Under this interim final rule, during years 2 and 3 after a full income review, PHAs and owners in the HCV, PH, and PBRA programs may determine a family's fixed income by using a verified COLA or rate of interest on the individual sources of fixed income. In the case of a family with at least 90 percent of the family's unadjusted income from fixed income, a PHA or owner using streamlined income verification may, but is not required to, adjust the non-fixed income. For families with at least one source of fixed income, but for which less than 90 percent of the family's income is from fixed sources, PHAs and owners must verify and adjust non-fixed sources annually.

This interim final rule does not change the requirement that the PHA or owner must undertake a full recertification every 3 years. Nor does it alter the requirement, applicable under the current regulations, that families certify that all the information they submit for income verification, including the sources of income, is accurate.

Utility Reimbursements (§ 5.632)

As required by § 5.632 of the current PBRA regulations, where tenants pay for their utility usage, owners must reimburse tenants if the utility allowance exceeds the total tenant payment, but they do not specify how frequently such reimbursement must be made. Such silence may have led owners to the assumption that reimbursements must be monthly, causing them to process small monthly checks and expend postage to mail them to voucher holders, which may constitute an administrative and financial burden.

This interim final rule explicitly allows owners to make reimbursements of $45 or less (per quarter) on a quarterly basis, in order to eliminate the burdensome process of processing and mailing monthly reimbursement checks. In the event a family leaves the program in advance of its next quarterly reimbursement, the owner would be required to reimburse the family for a prorated share of the applicable reimbursement. Owners exercising this option will be required to have a policy in place to assist tenants for whom the quarterly reimbursements will pose a financial hardship.

For the Section 202 and Section 811 programs, the regulations do not contain the requirements around utility reimbursements, in general, leaving such requirements in the assistance contracts. Therefore, HUD is not including regulatory text to implement these new flexibilities in this interim final rule, but rather would be open to amending the assistance contracts of any owners looking to take advantage of the flexibilities.

Family Declaration of Assets Under $5,000 (§ 5.659)

Families in the PBRA program are required to report all assets annually. The amount of interest earned on those assets is included as income used to calculate the tenant's rent obligation. Tenants with assets below $5,000 typically generate minimal income from these assets, which results in small changes, if any, to tenant rental payments. Owners spend significant time verifying such assets.

This rule amends the regulations so that, for a family that has net assets equal to or less than $5,000, an owner, at recertification, may accept a family's declaration that it has net assets equal to or less than $5,000, without annually taking additional steps to verify the accuracy of the declaration. Third-party verification of all family assets will be required every 3 years.

The regulations allow owners in the Section 202 and Section 811 programs to require tenants to provide the same certification of assets allowed in the HCV, PH, and PBRA programs.

Applicability to Housing Choice Voucher and Public Housing Programs

In the March 8, 2016, final rule, the provisions related to utility allowance reimbursements and asset certification applied to the HCV and PH programs only. HUD is currently expanding the same policies to the MFH programs through this interim final rule. However, comments on this interim final rule may lead us to reconsider those policies as they apply to the HCV and PH programs, in the interest of aligning policies across HUD programs.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.''

The Department finds that good cause exists to publish this interim rule for effect on the basis that the streamlining changes made to utility reimbursement and declaration of assets in this interim rule were included in HUD's January 6, 2015, proposed rule. Although these provisions were not presented as streamlining changes for adoption in HUD's MFH programs, commenters responding to the solicitation of comment in the January 6, 2015, proposed rule requested HUD consideration of extending the applicability of these provisions to HUD's MFH programs.

The language implementing the FAST Act is implementing statutory language that provides an option for PHAs and owners. While the statute does not mandate that PHAs or owners use the streamlined reexamination, it does require HUD to give PHAs and owners the option. In addition, this interim final rule builds upon proposals that already underwent public comment, resulting in HUD's March 8, 2016, final rule. The specific use of the Social Security Administration's COLA was not issued for prior public comment, but the use of a single COLA, unless requested otherwise by the family, will provide PHAs and owners with additional streamlining benefits.

Although HUD is issuing this rule for effect, HUD has delayed the effective date for a period of 90 days, allowing participants in HUD's MFH programs and other interested parties to submit comment during the first 30-day period following publication of this interim rule. HUD will take any comments received into consideration and determine whether any further changes should be made before implementing the streamlining changes for the MFH programs.

IV. Specific Question for Comment

While HUD welcomes comments on all aspects of this interim final rule, HUD is seeking specific comment on the following question:

The language in this interim final rule proposes a policy on utility reimbursements and asset certification identical to that applying to the HCV and PH programs contained in the March 8, 2016, final rule. Comments on this interim final rule may lead us to reconsider those policies as they apply to the HCV and PH programs, in the interest of aligning policies across HUD programs. Are there program-specific or unintended impacts in the HCV, PH, or MFH programs that should be considered in aligning these policies across programs? Would any difference cause a burden to entities administering these forms of assistance or to the tenants receiving the assistance?

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome,'' and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was not determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order.

As discussed, this interim final rule furthers HUD's efforts to streamline administrative requirements for owners receiving subsidies under the HCV, PH, PBRA, Section 202 and Section 811 programs. Specifically, this interim rule gives PHAs and owners greater flexibilities in determining tenant families' income and assets, and in issuing utility reimbursements. The rule provides PHAs and owners with the discretion to implement these regulations. Some may choose the status quo; others will choose the streamlining alternative. By allowing voluntary implementation, HUD enables participants to choose their desired method of administration, which in many cases will presumably be the least-cost method. Aggregate savings are expected to be approximately $31.2 million.

A. Benefits

The most significant savings come from reduced time devoted to administrative tasks related to certifying income. HUD expects that this streamlining interim rule will, in some cases, reduce the time required for income recertification, but it is difficult to know by how much, given the voluntary nature of the regulatory changes. To monetize the cost savings, we make assumptions concerning the proportion of PHAs and owners that will adopt the streamlining practices and what the time savings will be.

We assume that administrative costs for PH and PBRA, are similar to those for the HCV program. A HUD study of administrative costs in the HCV program found that, on average, 13.8 hours are required per voucher per year to run a high-performing program.[1] Half of the effort is allocated to ongoing occupancy, of which annual recertification is a major portion. Annual recertification includes preparing for and scheduling recertification, conducting interviews, verifying income and household composition, reviewing Enterprise Income Verification (EIV), and calculating total tenant payment and housing assistance payment. The average time spent is 232 minutes per voucher per year, with a 95 percent confidence interval of 206 to 257 minutes. The median is 225 minutes per voucher per year.

Based on this study, we estimate that the savings per household per year are 30 minutes (or approximately 12 percent of the total average reexamination time of 232 minutes).

[1] Housing Choice Voucher Administrative Fee Study, Final Report, August 2015.

The savings are realized 2 of every 3 years and, so, on average, the per-household per-year savings will be 20 minutes. If the opportunity cost of labor is $60 per hour, then the average savings per affected household per year is $20 ($1 per minute × 20 minutes).

Current regulations in the HCV, PH, and PBRA programs apply streamlined income verification practices to all households with any income coming from fixed-income sources (60 percent of households in these programs).[2] This interim final rule changes the streamlined procedures for households with at least 90 percent of their income from fixed-income sources (53 percent of all households), or 2.5 million of 4.7 million households in the HCV, PH, and PBRA programs being eligible to benefit from this interim final rule.

For these 2.5 million households, a PHA or owner using streamlined income verification may, but is not required to, adjust the non-fixed income. It is reasonable to expect that streamlining will be applied to no more than half of those eligible (or that the savings will be noticeable for no more than half). Thus, we assume that assistance providers realize average administrative efficiencies of $20 across 1.25 million households for aggregate savings of $25 million. The aggregate efficiencies realized would be correspondingly higher (lower) if applied to more (fewer) households or if opportunity costs were higher (lower). Given anecdotal evidence from streamlining regulations, HUD expects the lower-end estimates to be more representative of the impact of the changes. If the impact ranges from 0 percent to 75 percent of the point estimate, we could expect administrative efficiencies of from $0 to $37.5 million.

In addition to the savings seen by streamlining annual certification of income, self-certification by households of assets is expected to reduce administrative burdens on PHAs and owners in the PBRA, Section 202, and Section 811 programs. This interim final rule applies to the 95 percent of PBRA-, Section 202-, and Section 811-assisted households that have assets with a cash value of less than $5,000 but would only reduce costs for the 43 percent of households in these programs that have assets worth less than $5,000 but more than zero. Of the 589,000 estimated eligible households (43 percent of 1.378 million), we assume that the streamlining savings will be realized for half of them. Applying the same logic as for income recertification and assuming that the average savings per household from streamlining is $20, the aggregate savings will be $5.9 million.

Further savings come from allowing quarterly utility reimbursements when such quarterly amounts are $45 or less. The Tenant Rental Assistance Certification System (TRACS) database which contains data on multifamily owners, contracts, and tenants, reports that as of March 2017, 82,000 households assisted by the PBRA, Section 202 and Section 811 programs (of approximately 1.37 million) received utility reimbursements. Of these households, 30,000 received a monthly utility reimbursement less than $45. If administrators choose quarterly reimbursements as opposed to monthly, then doing so would save some time and expense by eliminating the costs of sending eight letters every year to eligible households. Because it is a minor activity, information to estimate time spent on utility reimbursements is not available. We assume that processing and mailing costs $3 per letter. Over 1 year, the savings amount to $24 (8 months × $3) per affected household. If only half choose the streamlining, then total savings will be $0.36 million.

By allowing voluntary implementation, HUD enables participants to choose their desired method of administration, which in many cases will presumably be the least-cost method. It is difficult to estimate the savings with precision given that an unknown number of PHAs and owners may choose the status quo. Based on the aforementioned assumptions, aggregate savings are expected to be approximately $31.2 million ($24.9 million from income verification + $0.6 million from utility reimbursement + $5.9 million from asset verification).

B. Costs and Transfers

All of the regulatory changes included in this interim final rule are intended to provide additional options and flexibilities to PHAs and owners, not to mandate new actions. Therefore, HUD expects that PHAs and owners will not adopt any new procedures that add costs to their operations.

There may be a small transfer resulting from the change to the income streamlining regulations due to foregone tenant rent increases that would otherwise be owed by an unknown portion of the 2.5 million tenants affected by the new 90 percent fixed-income cutoff; there is no incentive to report an increase in income if regulations do not require doing so. Those households who realize a positive transfer from HUD is the subset who experience increases in non-fixed income during years 2 and 3 of the streamlined recertification cycle.

Of those households who receive 90 percent of income from fixed sources, the *median* annual income from non-fixed sources (labor earnings, asset income, temporary public assistance, and other sources of income) is $0. The *mean* annual income from non-fixed sources across all such households is $44. Under previous regulations, these households would contribute up to 30 percent of any increase in income to their rent payments. Thus, the transfer to households would be approximately 30 percent of any income *gain* in non-fixed income sources. If we assume that all non-fixed incomes increase by 1 percent for all households, then the average gain would be $0.13 annually ($44 × 1 percent growth × 30 percent towards tenant payment). This transfer occurs in only 2 out of every 3 years and so would be approximately $0.09 on average. The aggregate transfer could be as high as $225,000. As noted, most households will not experience such an impact: Only 13 percent of the affected population receive income from other than fixed-income sources. If we limit the effect to those who receive non-fixed income the measured impact is more pronounced: The mean non-fixed income is $338. The individual impact is more pronounced (about 10 times larger) for such households. Less frequent recertification will lead to less timely data but, given the relative stability of fixed-income streams, would not result in a significant change in the payment of housing assistance.

There may also be a small cost to the tenant from temporarily withholding utility reimbursements for quarterly reimbursements. However, given the short time span and low amount, the maximum opportunity cost for a household would range from $0.44 (at a 3 percent annual discount rate) to $1.04 (at a 7 percent annual discount rate.[3] The maximum aggregate cost across 30,000 households ranges from $13,200 to $31,200. However, the actual cost will be less because not all of the

[2] This percentage was computed by HUD staff using HUD data. It is further assumed that the percentage is consistent and observable across all HUD programs.

[3] If the annual discount rate is 3 percent (7 percent), then the monthly discount rate is 0.25 percent (0.57 percent). The maximum burden on households will be when the utility reimbursement is $15 per month ($45 per quarter). For every quarter, the first month's reimbursement will be delayed by 2 months and the second month's by 1 month. Per quarter the burden will be $0.11 ($0.26 cents) at a 3 percent (7 percent) annual discount rate.

affected 30,000 households receive monthly utility reimbursements of $15 or less.

Any associated risk of lost revenue to PHAs, owners, or HUD resulting from errors in imputed asset income is expected to be negligible. HUD's Quality Control Study (QC Study) reports that 34.5 percent of all households in HUD-assisted housing programs reported some errors in their income reporting. Of the group with income reporting errors, only 3 percent were found to have erroneously reported their annual asset income (by $800 on average).

A potential administrative inefficiency is that the frequency and size of reporting error would increase if certifications are required every 3 years. Examination of quality control data from 2014 reveals that the net error in rent payments is more positive (indicating a tenant is overpaying) and varies less when asset income is the largest source of the rent error. For those with assets less than $5,000, the estimated annual net error is only $8 in cases where asset income is the largest source of error (representing an overpayment). It is not clear what the impact of the rule would be on the level of the net error; however, we could expect greater variability with less accurate data. From the quality control data, we estimate that 1 percent of all households are those with assets less than $5,000 for which errors originate from miscalculation of asset income (or 132,500 of 1.325 million households in multifamily housing). Even if the net error doubled because of the rule, the transfer to or from tenants would amount to no more than $1 million per year 2 out of every 3 years. Finally, streamlining would allow staff to more rigorously control tenant information that is a greater source of error (such as earned income).

Information Collection Requirements

The information collection requirements contained in this interim final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0204. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim final rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

This interim final rule involves external administrative requirements and procedures related to calculation of HUD rental assistance that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this interim final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim final rule reduces administrative burdens on PHAs and MFH owners in several aspects of administering assisted housing. All PHAs and MFH owners, regardless of size, will benefit from the burden reduction made by this interim final rule. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this interim final rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this interim final rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the program affected by this interim final rule are 14.157, 14.181, 14.195, 14.850, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD is amending 24 CFR parts 5, 891, 960, and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 2. In § 5.632, add three sentences to the end of paragraph (b)(1) to read as follows:

§ 5.632 Utility reimbursements.

* * * * *

(b) * * *

(1) * * * The responsible entity has the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling $45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the responsible entity must reimburse the family for a prorated share of the applicable reimbursement. PHAs and owners exercising this option must have a hardship policy in place for tenants.

* * * * *

■ 3. In § 5.657, revise paragraph (d) to read as follows:

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

* * * * *

(d) *Streamlined income determination*—(1) *General.* An owner may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (d)(3) of this section.

(2) *Definition of ''fixed income''.* For purposes of this section, ''fixed income'' means periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(ii) Federal, state, local, or private pension plans.

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(3) *Method of streamlined income determination.* Owners using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of fixed income, owners using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, owners may choose, but are not required, to make appropriate adjustments pursuant to paragraph (b) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, owners using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Owners must determine all other income pursuant to paragraph (b) of this section.

(4) *COLA rate applied by owners.* Owners using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) *Triennial verification.* For any income determined pursuant to a streamlined income determination, an owner must obtain third-party verification of all income amounts every 3 years.

■ 4. Amend § 5.659 by revising paragraph (d) introductory text and adding paragraph (e) to read as follows:

§ 5.659 Family information and verification.

* * * * *

(d) *Owner responsibility for verification.* Except as allowed under paragraph (e), the owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

* * * * *

(e) *Verification of assets.* For a family with net assets equal to or less than $5,000, an owner may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than $5,000 without taking additional steps to verify the accuracy of the declaration, except as required in paragraph (e)(2) of this section.

(1) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(2) An owner must obtain third-party verification of all family assets every 3 years.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 5. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 6. In § 891.415, revise paragraph (a)(2) to read as follows:

§ 891.415 Obligations of the household or family.

* * * * *

(a) * * *

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner (or Borrower, as applicable) or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 5, subpart B; the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and any certification of family net assets, as provided by 24 CFR 5.659(e);

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 7. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 8. In § 960.257, redesignate paragraphs (b)(3) and (c) as paragraphs (c) and (d), respectively, and revise redesignated paragraph (c) to read as follows:

§ 960.257 Family income and composition: Annual and interim reexaminations.

* * * * *

(c) *Streamlined income determination*—(1) *General.* A PHA may elect to apply a streamlined income determination to families receiving fixed income, as described in paragraph (c)(3) of this section.

(2) *Definition of ''fixed income''.* For purposes of this section, ''fixed income'' means periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(ii) Federal, state, local, or private pension plans.

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(3) *Method of streamlined income determination.* A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of

fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's sources of fixed income, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA may choose, but is not required, to make appropriate adjustments pursuant to paragraph (a) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to paragraph (a) of this section.

(4) *COLA rate applied by PHAs.* PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 9. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 10. In § 982.516, revise paragraph (b) to read as follows:

§ 982.516 Family income and composition: Annual and interim reexaminations.

* * * * *

(b) *Streamlined income determination*—(1) *General.* A PHA may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (b)(3) of this section.

(2) *Definition of ''fixed income''.* For purposes of this section, ''fixed income'' means periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(ii) Federal, state, local, or private pension plans.

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(3) *Method of streamlined income determination.* A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA may choose, but is not required, to make appropriate adjustments pursuant to paragraph (a) of this section

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to paragraph (a) of this section.

(4) *COLA rate applied by PHAs.* PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

* * * * *

Dated: November 8, 2017.

Pamela H. Patenaude,

Deputy Secretary.

[FR Doc. 2017–26697 Filed 12–11–17; 8:45 am]

BILLING CODE 4210–67–P; 5743–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0574; FRL–9971–56–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Removal of Clean Air Interstate Rule Trading Programs Replaced by Cross-State Air Pollution Rule Trading Programs; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the September 25, 2017 direct final rule that approved two state implementation plan (SIP) revisions submitted by the State of West Virginia removing the Clean Air Interstate Rule (CAIR) annual nitrogen oxide (NO_X) and annual sulfur dioxide (SO_2) trading programs from the West Virginia SIP.

DATES: The direct final rule published at 82 FR 44525 on September 25, 2017 is withdrawn as of December 12, 2017.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 13, 2016, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted three SIP revisions requesting that EPA remove from its SIP three regulations that implemented the CAIR (70 FR 25162, May 12, 2005) trading programs: Regulation 45CSR39—*Control of Annual Nitrogen Oxides Emissions,* Regulation 45CSR40—*Control of Ozone Season Nitrogen Oxides Emissions,* and Regulation 45CSR41—*Control of Annual Sulfur Dioxide Emissions.* The September 25, 2017 action pertained to the two submittals that requested removal of 45CSR39 and 45CSR41, the CAIR annual NO_X and annual SO_2 trading programs, respectively, from the West Virginia SIP. The submittal pertaining to removal of the CAIR ozone season NO_X trading program was not a part of that action and is being addressed in a separate action. In the direct final rule published on September 25, 2017 (82 FR 44525), EPA stated that if EPA received adverse comments by October 25, 2017, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment from an anonymous commenter.

Because an adverse comment was received, EPA is withdrawing the direct final rule approving the revisions to the West Virginia SIP that remove the CAIR annual trading programs for NO_X and SO_2. EPA will address the comment received in a subsequent final action based upon the proposed rulemaking action also published on September 25, 2017 (82 FR 44544), for the two July 13, 2016 SIP submissions. EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 22, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendments to § 52.2520(c) published on September 25, 2017 (82 FR 44525), which were to become effective December 26, 2017, are withdrawn as of December 12, 2017.

[FR Doc. 2017–26408 Filed 12–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2017–0459; FRL–9971–83–Region 2]

Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving a State Implementation Plan (SIP) submitted by the State of New York for purposes of implementing Reasonably Available Control Technology (RACT) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) related to control of volatile organic compounds (VOCs) from industrial cleaning solvents. The EPA is approving New York's Ozone Transport Region RACT SIP as it applies to non-control technique guideline major sources of VOCs and major sources of oxides of nitrogen. The EPA is also approving the State of New York's state-wide non-attainment new source review certification as sufficient for purposes of satisfying the 2008 8-hour ozone NAAQS. The EPA is approving New York's certification that there are no sources within the State for the following CTGs: Manufacture of Vegetable Oils and Application of Agricultural Pesticides. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective on January 11, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2017–0459. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3892, or by email at *Gardella.Anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. What is the background for this action?
II. What comments were received in response to the EPA's proposed action?
III. What action is the EPA taking?
IV. What are the consequences if a condition is not met?
A. What are the Act's provisions for sanctions?
B. What Federal implementation plan provisions apply if a state fails to submit an approvable plan?
V. Statutory and Executive Order Reviews

I. What is the background for this action?

On September 14, 2017 (82 FR 43209), the EPA published a Notice of Proposed Rulemaking that proposed to conditionally approve the State of New York's December 22, 2014 State Implementation Plan (SIP) submittal,[1] for purposes of implementing Reasonably Available Control Technology (RACT)[2] for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). The EPA proposed to approve New York's Ozone Transport Region RACT SIP as it applies to non-control technique guideline major sources of VOCs and major sources of oxides of nitrogen. The EPA also proposed to approve the State of New York's state-wide non-attainment new source review certification as sufficient for purposes of satisfying the 2008 8-hour ozone NAAQS.[3] In addition, the EPA proposed to approve New York's certification that there are no sources within the State for the following CTGs: (a) Manufacture of Vegetable Oils and (b) Application of Agricultural Pesticides.

The proposed approval was conditioned on New York finalizing revisions to RACT requirements related sources subject to the industrial cleaning solvents control techniques guidelines (CTG). As the SIP submittal indicates, the RACT requirements for the 2008 ozone NAAQS have been fulfilled with the exception of sources subject to the industrial cleaning solvents CTG. In the SIP submittal, New York committed to address sources subject to this CTG through a timely revision to Title 6 of the New York Codes, Rules and Regulations Part 226 entitled, ''Solvent Metal Cleaning Processes'' (6 NYCRR Part 226). Therefore, consistent with section 110(k)(4) of the Clean Air Act (CAA), the EPA's September 14, 2017 rulemaking, signed September 6, 2017 and published September 14, 2017, proposed to conditionally approve New York's December 2014 SIP submittal. On September 6, 2017, New York supplemented its SIP submittal with a letter to the EPA committing to fulfill the requirements of the industrial cleaning solvents CTG by finalizing revisions to Part 226 by November 30, 2018. Therefore, based on the State's September 6, 2017 commitment letter, the EPA is conditionally approving New York's December 2014 SIP submittal, as it applies to CTG requirements for VOC major sources, for purposes of implementing RACT statewide for the 2008 8-hour ozone NAAQS.

The specific details of New York's December 2014 SIP submittal and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this

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[1] New York supplemented its SIP submittal by letter dated September 6, 2017.

[2] The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

[3] New York's nonattainment new source review certification addresses both the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Jamestown nonattainment areas.

final action. For this detailed information, the reader is referred to the EPA's September 14, 2017 proposed rulemaking (82 FR 43209).

II. What comments were received in response to the EPA's proposed action?

In response to the EPA's September 14, 2017 proposed rulemaking on New York's December 2014 SIP submittal, the EPA received the following four comments summarized below. The specific comments may be viewed under Docket ID Number EPA–R02–OAR–2017–0459 on the *http://www.regulations.gov* Website.

Comment 1: An anonymous citizen comments that he or she ''believes the proposed rule will help improve the environment greatly.''

Response 1: The EPA acknowledges the commenter's support of the EPA's proposed rule.

Comment 2: A New York State citizen provides extensive comments related to the EPA's encouragement (see 82 FR 43209 (September 14, 2017)) to New York to strengthen its ozone SIP by adopting and submitting as a SIP revision additional control measures needed for attainment of the 8-hour ozone NAAQS as it relates to: The adoption of more stringent emission limits for simple cycle combustion turbines firing distillate oil or more than one fuel and submitting a SIP revision that addresses HEDD (High Electric Demand Day) sources. The citizen states that regional ozone modeling that analyzes emissions data from 2015 or 2016 is necessary before New York should consider, much less implement, the SIP revisions that EPA ''encourages'' New York to adopt and submit as SIP revisions.

The commenter states that he had prepared comments and analyses that support his recommendation to do further modeling before implementing any further controls. The commenter states that he had compared NO_X emissions from all New York sources reporting NO_X emissions to EPA and all New York combustion turbines with ozone concentration measurements at the Fairfield, CT ozone monitoring station on all Ozone Season days with valid observations at this monitoring station from 2006 to 2016. The commenter states that the Fairfield monitoring site is the downwind ambient monitor with the highest New York impact according to EPA's modeling for its Cross-State Air Pollution Rule (CSAPR). The commenter notes that all combustion turbines that meet this criterion are either in New York City or on Long Island. The commenter's detailed 52-page modeling and statistical summary appears in Attachment 1 to his October 11, 2017 comment letter. The commenter's summary concludes that the ''results indicate that refined modeling with recent emissions has to be performed to confirm that further controls will reduce ozone enough to warrant further controls on any of the New York sources included in this analysis.''

The commenter concludes his letter by stating that there are complex meteorological conditions during ozone episodes downwind of New York (land and sea breezes, elevated terrain concerns, and the nocturnal boundary layer structure along the coast) that need to be incorporated into regional ozone modeling analyses. The commenter states that if regional ozone modeling analyses that use post-2015 emissions data and incorporate complex meteorology are not used then New York runs the risk of implementing a control program that cannot succeed. Concluding, the commenter states, ''Given the level of effort and time doing the modeling right it might be necessary to delay implementation of further SIP control requirements.''

Response 2: The EPA thanks the commenter for the detailed analyses and recommendations with respect to the additional control measures. These comments are not germane to the EPA's proposed approval of New York's December 2014 SIP but rather are relevant to future planning requirements associated with the moderate area classification. The EPA, therefore, is not responding to them in this action. These detailed modeling and statistical analyses are best directed to New York State as the State develops planning requirements for progressing, under moderate area classification, toward attainment of the 8-hour ozone standard.

Comment 3: Similar to Comment 2 above, a comment from the Environmental Energy Alliance of New York, LLC (the ''Alliance'') provides extensive comments related to the EPA's encouragement (see 82 FR 43209, September 14, 2017) to New York to strengthen its ozone SIP by adopting and submitting as a SIP revision with additional control measures needed for attainment of the 8-hour ozone NAAQS as it relates to more stringent emission limits on simple cycle turbines units and peaking units that operate on high electric demand days (HEDD). Alliance members own and operate electric generating and transmission and distribution facilities throughout New York and elsewhere. Alliance members operate the majority of the peaking units in the New York Metropolitan Area (NYMA).

The Alliance expresses concern that the imposition of emission limits needs to be balanced with the need to maintain reliable electricity service to New York. While the Alliance supports New York's and the EPA's efforts to reach attainment of the ozone NAAQS, the Alliance suggests that the need to reduce emissions in the NYMA and the Alliance's requirement to maintain reliable service to its customers is a more complex issue than simply imposing more stringent emission limits. The Alliance comments that there are over 100 peaking turbines (about 3000 megawatts (MW)) in the NYMA to maintain system reliability and support renewables. The Alliance states that with the impending closure of 2000 MW of nuclear generation, the combined effect of the peaking unit regulation changes and retirements suggests any new rule implementation should proceed with flexibility and caution.

The Alliance states that it has worked cooperatively with New York to develop an approach to replace, repower, or retrofit controls of existing peaking units. The Alliance's October 16, 2017 comment letter includes as an attachment a September 8, 2017 letter commenting on New York's July 25, 2017 pre-proposal entitled ''Combustion Turbine (Peaking Unit) Pre-Proposal Outline'' which outlines, according to the Alliance, New York's efforts to achieve attainment of the ozone NAAQS in the NYMA as it relates to peaking units. In its September 2017 letter to New York, the Alliance expresses the hope to collectively design cost-effective solutions compatible with the need to maintain reliable service to ratepayers. In addition, in its September 2017 letter, the Alliance provides detailed comments and recommendations related to the following issues: the compliance schedule, emission limits, performance of control options, potential for collateral increase in carbon monoxide, system averaging, emission limits for dual-fueled units, compliance requirements during the interim period before unit retirement, and alternative approaches to NO_X reductions in the NYMA.

Response 3: The EPA appreciates the Alliance's comments with respect to their concern for electric system reliability within the NYMA and the need for caution and flexibility when developing and implementing new NO_X control measures on peaking units. EPA acknowledges the importance of maintaining reliable electric service to

ratepayers while implementing new NO_X controls.

These extensive and detailed comments concerning the connection between reliability of the electric grid and the development and implementation of NO_X emission limits on electric generating units are best directed to New York State as the State engages in planning for progressing, under moderate area classification, to attainment of the 8-hour ozone standard. These comments relating to the reliability of the electric grid are not germane as they do not specifically address the EPA's proposed action on New York's December 2014 SIP submittal that addresses the implementation of RACT for the 8-hour 2008 ozone standard.

Comment 4: The State of New Jersey Department of Environmental Protection (NJDEP or New Jersey) comments that New York's December 2014 RACT SIP will provide necessary emission reductions in NO_X and VOC for the New York-Northern New Jersey-Connecticut (NY-NJ-CT) ozone nonattainment area to move towards attainment of the 2008 ozone NAAQS (75 ppb ozone), but more still needs to be done for the area to attain. NJDEP recommends that the EPA require New York to adequately address three source categories that emit significant amounts of emissions that impact ozone levels in the NY-NJ-CT area:

1. Adopt rules that reduce NO_X emissions from peaking turbines during high ozone days in the NY-NJ-CT area.
2. Adopt rules that reduce NO_X emissions from stationary engines used for demand-side management that generate electricity during high ozone days in the NY-NJ-CT area.
3. Assess lightering operations in the New York harbor that emit VOC from crude oil, gasoline, and other volatile product transfers.

As part of the State's October 10, 2017 comment letter, NJDEP attached its August 20, 2014 comment letter to New York at the time New York proposed its RACT SIP in 2014. NJDEP's August 2014 comment letter to New York provides NJDEP's detailed arguments as to why New York needs to address the above mentioned three source categories as RACT sources. NJDEP states that the first two source categories are subject to the New Jersey's RACT regulation but not the third source category since there are no lightering operations in New Jersey waters. NJDEP comments that New York, in finalizing its 2014 RACT SIP, did not adequately address the same three source categories since New York responded that the three source categories did not meet their definition of RACT. NJDEP comments that it believes these source categories should be covered under RACT requirements because they are existing, major stationary sources for which reasonably available control technology exists. NJDEP comments that the lightering activities can be considered a major stationary source, similar to the EPA's treatment of some airports for emissions inventory, since the activities are occurring within established areas of New York Harbor. NJDEP further comments that the State of Delaware has had regulations addressing lightering activities since 2007 thus establishing reasonably available control technology.

Response 4: The EPA appreciates the comments from NJDEP. NJDEP recommends that New York consider the three source categories identified in its comment as RACT but NJDEP does not provide supporting technical details to demonstrate that certain control measures for these three source categories can be considered RACT in New York.

As stated in our proposed rule dated September 14, 2017 (82 FR 43209), New York's December 22, 2014 SIP submittal included a response to a comment that ''once the NYMA is reclassified to moderate nonattainment for the 2008 ozone NAAQS and an attainment SIP is required, DEC [New York] will undertake a review of its many NO_X control options to determine which would most efficiently and effectively reduce emissions in the NYMA.'' New York made a similar response to a comment related to VOC emissions from lightering operations. Since the NYMA was reclassified from a marginal to a moderate nonattainment area on May 4, 2016 (81 FR 26697), effective June 3, 2016, the following EPA response to NJDEP comments is a recommendation that New York include, as part of its upcoming attainment demonstration SIP for the 8-hour ozone NAAQS for the NYMA moderate nonattainment area, an evaluation of the NJDEP and the EPA's recommended additional control measures for purposes of reducing additional NO_X and VOC emissions.

In response to NJDEP's August 2014 letter, New York issued a document entitled ''Assessment of Public Comments New York State Implementation Plan for 8-hour Ozone: Reasonably Available Control Technology'' (Assessment) which is included in the docket for this action. In its Assessment, New York responded to the three source category comments from NJDEP as summarized below.

For peaking turbines, New York responded that peaking generating units that exceed major source emission threshold are subject to the State's NO_X RACT regulation for combustion turbines and New York maintained that these emission limits represent RACT for combustion turbines. New York further responded that the most recently adopted and SIP approved (78 FR 41846, July 12, 2013) NO_X RACT regulation requires case-by-case evaluations for combined-cycle combustion turbines. New York further stated that combustion turbines are also used as part of a system-wide averaging plan for NO_X RACT and therefore more stringent limits may not necessarily result in a one-for-one reduction in NO_X.

In response to New Jersey's comment, the EPA finds that New York's OTR NO_X RACT SIP submittal is sufficient. System-wide averaging is an EPA approved RACT compliance option.

The EPA, however, encourages New York to evaluate whether NO_X emission limits, for the combustion turbines not part of a system-wide averaging program, could be more stringent. As stated in our September 2017 proposal, the EPA encourages New York to evaluate lowering the NO_X emission limit for simple cycle combustion turbines combusting distillate oil or more than one fuel since New York's neighboring states of New Jersey and Connecticut have more stringent emission limits than New York's limit of 100 parts per million (ppm). For this source category, Connecticut has adopted NO_X emission limits of 40–75 ppm for June 2018 and 40–75 ppm for June 2023 and New Jersey's adopted limit is equivalent to 43 ppm. In addition, the EPA encourages New York to propose and submit as a SIP revision for the EPA's approval any revised case-by-case RACT determinations for combined-cycle combustion turbines.

For stationary engines used for demand-side management, New York responded in its Assessment that the majority of combustion engines used for demand-side management are minor sources based on NO_X emission levels and are therefore not subject to RACT; and engines that do exceed major source emission threshold are subject to the State's NO_X RACT regulation. New York maintained that these requirements fulfill RACT.

In response to New Jersey's comment, the EPA herein responds that we concur with New York's logic, as articulated in its Assessment (see preceding paragraph) regarding RACT applicability for sources considered minor and major. EPA nonetheless encourages New York to consider a more stringent NO_X emission limit for internal combustion engines firing with

distillate oil (solely or in combination with other fuels) from the current limit of 2.3 grams per brake horsepower-hour (g/bhp-hr) to the limit adopted in Connecticut of 1.5 (for rich burn engine)-2.3 (for lean burn engine) g/bhp-hr, starting in June 2023. In addition, New Jersey's SIP approved (72 FR 41626, July 31, 2007) NO_X RACT regulation, Subchapter 19, includes a NO_X emission limit of 1.5 g/bhp-hr for rich burn engines.

For lightering operations in the New York harbor, New York, in its Assessment, responded that they do not consider tank vessels or service vessels to be stationary sources; such vessels are considered mobile sources and are not permitted under the Title V stationary source permitting program. New York concluded that it is not appropriate to address lightering operations in the New York SIP. In response to New Jersey's comment, the EPA finds that New York's OTR VOC RACT SIP submittal is approvable given New York's current treatment of tank vessels and service vessels.

The EPA recognizes that, as New Jersey indicates in its comment, the State of Delaware regulates lightering operations in the State's ''Regulation No. 1124—Control of Volatile Organic Compound Emissions (formally Regulation No. 24), section 46 entitled, Crude Oil Lightering Operations.'' The EPA approved Delaware's VOC RACT Regulation 1124, section 46, Crude Oil Lightering Operations, into the SIP on September 13, 2007 (72 FR 52285). As discussed above, in response to a comment received by the State during its RACT rulemaking process, New York states that, if the NYMA is reclassified to moderate nonattainment, ''New York will investigate the need and appropriateness for additional emission reductions and evaluate lightering controls and/or other emission reductions strategies in order to determine the most effective manner in which to attain the ozone NAAQS.'' Therefore, the EPA recommends that New York review the lightering operations in New York's harbor for possible applicability to RACT as it relates to New York's future submittal of its attainment SIP for the NYMA nonattainment area.

To summarize, since the NYMA has been reclassified from marginal to a moderate nonattainment area, New York is required to submit a new RACT determination as part of the State's attainment demonstration for the 2008 ozone standard for the NYMA moderate nonattainment area. New York should include an evaluation of the three source categories suggested by NJDEP, as well as the other recommendations discussed by the EPA as in the September 14, 2017 proposal, in its RACT evaluation as part of the State's attainment demonstration for the 2008 ozone standard.

III. What action is the EPA taking?

The EPA is conditionally approving New York's statewide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement, as it applies to CTG requirements for VOC major sources. New York must meet its commitment to adopt a revised Part 226 by November 30, 2018.

The EPA is approving the remainder of New York's OTR RACT SIP submittal, as it applies to non-CTG major sources of VOCs and to major sources of NO_X.

The EPA is also approving New York's non-attainment new source review certification, state-wide, as sufficient for purposes of the 2008 ozone NAAQS. Finally, the EPA is approving New York's certification that there are no sources within the State for the following CTGs: (a) Manufacture of Vegetable Oils and (b) Application of Agricultural Pesticides.

Under section 110(k) of the CAA, the EPA may conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but not later than one year after the date of approval of the plan revision. If New York meets its commitment within the applicable time frame, the conditionally approved submission will remain as part of the SIP until the EPA takes final action approving or disapproving the SIP requirement in question. If New York fails to meet its commitment within the specified time period, the conditional approval will, by operation of law, become a disapproval. If the conditional approval becomes a disapproval, this commitment will no longer be a part of the approved SIP for New York, and an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1) would commence. The EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval converted to a disapproval.

IV. What are the consequences if the condition is not met?

The Act provides for the imposition of sanctions and the promulgation of a FIP if States fail to correct any deficiencies identified by the EPA in a final disapproval action within certain timeframes.

A. What are the Act's provisions for sanctions?

If the EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP submittal or if the State fails to make the required submittal. Under the EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the State has still failed to submit a SIP 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. The EPA also has authority under section 110(m) to sanction a broader area.

B. What Federal implementation plan provisions apply if a state fails to submit an approvable plan?

In addition to sanctions, if the EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, the EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 29, 2017.

Peter D. Lopez,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding the entries ''2008 8-hour Ozone RACT analysis'' and ''2008 8-hour Ozone Nonattainment New Source Review Requirements'' at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISION

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
*	*	*	*	*
2008 8-hour Ozone RACT analysis.	Statewide and to the New York portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) and the Jamestown 8-hour ozone nonattainment areas.	12/22/14	12/12/17	• Full approval as it applies to non-CTG major sources of VOCs and to major sources of NO_X. • Conditional approval as it applies to CTG for VOC major sources.
2008 8-hour Ozone Nonattainment New Source Review Requirements.	Statewide and to the New York portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) and the Jamestown 8-hour ozone nonattainment areas.	12/22/14	12/12/17	• Full approval.

■ 3. Amend § 52.1683 by adding paragraphs (b)(2) and (3) and (p) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(b) * * *

(2) Manufacture of Vegetable Oils.

(3) Application of Agricultural Pesticides.

* * * * *

(p)(1) The December 22, 2014 New York reasonably available control technology (RACT) analysis plan, as supplemented on September 6, 2017, submitted pursuant to the 2008 8-hour ozone national ambient air quality standard (NAAQS), which applies to the entire State, including the New York portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) and the Jamestown 8-hour ozone marginal nonattainment areas, is conditionally approved as it applies to the Clean Air Act control techniques guidelines (CTG)

requirements for major sources of volatile organic compounds (VOC).

(2) The remainder of New York's December 22, 2014 RACT analysis plan, pursuant to the 2008 8-hour ozone NAAQS as applied to the entire State, including the New York portion of the NY-NJ-CT and the Jamestown 8-hour ozone marginal nonattainment areas, and as it applies to non-CTG major sources of VOCs and to major sources of oxides of nitrogen (NO_X), is approved.

(3) The December 22, 2014 New York plan submittal providing a nonattainment new source review (NNSR) certification as sufficient for purposes of the state-wide 2008 8-hour ozone NAAQS, including the New York portion of the NY-NJ-CT and the Jamestown 8-hour ozone nonattainment areas, is approved.

[FR Doc. 2017–26657 Filed 12–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0406; FRL–9971–43–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque and Bernalillo County; Regional Haze Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a revision to a State Implementation Plan (SIP) for the City of Albuquerque and Bernalillo County, New Mexico (the County) submitted by the Governor on June 24, 2016. The SIP revision addresses requirements of the Act and the EPA's rules that require the County to submit a periodic report assessing reasonable progress goals (RPGs) for regional haze with a determination of the adequacy of the existing regional haze SIP.

DATES: This rule is effective on January 11, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0406. All documents in the docket are listed at the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: James E. Grady, (214) 665–6745; *grady.james@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' each mean ''the EPA.''

I. Background

The background for this action is discussed in detail in the October 2, 2017 proposal (82 FR 45762). In that document the EPA proposed to approve the County's regional haze progress report SIP revision (submitted on June 24, 2016) as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10). In addition, the EPA proposed to approve the County's determination that the current regional haze SIP is adequate to meet the State's 2018 RPGs for the first planning period and does not require further substantive revision to achieve the established regional haze goals. The public comment period for the proposal closed on November 1, 2017. The EPA did not receive any comments regarding the proposal during its public comment period.

II. Final Action

The EPA is approving the County's regional haze progress report SIP revision (submitted on June 24, 2016) as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10)(i)(A) through (G). The EPA is also approving the County's determination that the current regional haze SIP requires no further substantive revision at this time in order to achieve the established 2018 RPGs for visibility improvement and emission reduction (40 CFR 51.309(d)(10)(ii)). This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available retrofit technology, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: December 5, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. In § 52.1620(e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' is amended by adding an entry for ''City of Albuquerque Progress Report for the State Implementation Plan for Regional Haze'' at the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
City of Albuquerque Progress Report for the State Implementation Plan for Regional Haze.	City of Albuquerque-Bernalillo County.	6/24/2016	12/12/2017, [Insert **Federal Register** citation].	

[FR Doc. 2017–26661 Filed 12–11–17; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Federal Civil Penalties Adjustments

AGENCY: National Endowment for the Arts, National Foundation for the Arts And Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule finalizes the catch-up inflation adjustment interim final rule required by the Inflation Adjustment Act.

DATES: *Effective date:* This rule is effective December 12, 2017.

FOR FURTHER INFORMATION CONTACT: Aswathi Zachariah, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

On June 15, 2017 the NEA issued an interim final rule entitled ''Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015'' (the IFR) to implement the required catch-up and annual adjustments to the NEA's civil monetary penalties. (*See* 82 FR 27431) This rule finalizes the catch-up adjustment interim final rule and outlines the required annual adjustment of civil penalties in accordance with the 2015 Act, as amended.

2. Overview of Final Rule

The 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation. Inflation adjustments will be based on the percent change in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, relative to the October CPI–U in the year of the previous adjustment.

The Office of Management and Budget has issued two memoranda, providing guidance on implementing and calculating adjustments.[1]

In the IFR, the NEA identified two civil penalties in its regulations that require adjustment: (1) The penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A) and (2) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9). The NEA received no comments in response to the IFR and the proposed adjustments and therefore will continue to publish subsequent annual adjustments in

[1] OMB Memoranda M–16–06 and M–17–11.

accordance with the law or as directed by the Office of Management and Budget.

3. Subsequent Annual Adjustments

The 2015 Act requires agencies to make annual adjustments to civil penalty amounts no later than January 15 of each year following the adjustments contained in this final rule. For subsequent annual adjustments made in accordance with the 2015 Act, the amount of the adjustment will have the same basis as the annual adjustments previously described in the IFR (the percent increase between the CPI–U for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment). If there is no increase, there is no adjustment of civil penalties. Therefore, if the NEA adjusts penalties in January 2018, the adjustment will be calculated based on the percent change between the CPI–U for October 2017 (the October immediately preceding the date of adjustment) and October 2016 (the October one year prior to October 2017). The NEA will publish the amount of these annual inflation adjustments in the **Federal Register** no later than January 15 of each year.

4. Compliance

Administrative Procedure Act

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the **Federal Register**. ''This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment.'' OMB Memorandum M–17–11.

Even if the 2015 Act did not except this rulemaking from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the FCPIAA, as amended, leaving no discretion for the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules with (1) an impact on the economy of $100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. We have made the assessments required by E.O. 12866 and determined that this rule: (1) Will not have an effect of $100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Executive Order 13771

Executive Order 13771 section 5 requires that agencies, in most circumstances, remove or rescind two regulations for every regulation promulgated unless they request and are specifically exempted from that order's requirements by the Director of the Office of Management and Budget.

This rule is not subject to the requirements of Executive Order 13771 because this rule is not significant under Executive Order 12866. Furthermore, the NEA has requested and has received an exemption from the requirement that the agency rescind two regulations for every regulation it promulgate from the Director of the Office of Management and Budget.

Federalism (Executive Order 13132)

This rulemaking does not have Federalism implications, as set forth in E.O. 13132. As used in this order, Federalism implications mean ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NEA has determined that this rulemaking will not have Federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This rulemaking will not impose any ''information collection'' requirements under the Paperwork Reduction Act. Under the act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104–121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible Website. All information about the NEA required to be published in the **Federal Register** may be accessed at *www.arts.gov.* This Act also requires agencies to accept public comments on their rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government Website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The Website *https://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this rule on the Federal Plain Language Guidelines.

Public Participation

The NEA has written this final rule in compliance with E.O. 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility. In addition, the public participation goals of this order are also satisfied by the NEA's participation in a process in which its views and information are made public to the extent feasible, and before any decisions are actually made. This will allow the public the opportunity to react to the comments, arguments, and information of others during the rulemaking process. The NEA initiates its participation in an open exchange by posting the regulation and its rulemaking docket on *https://www.regulations.gov.*

Finally, Section 2 of E.O. 13563 directs agencies, where feasible and appropriate, to seek the views of those who are likely to be affected by rulemaking. This provision emphasizes the importance of prior consultation with ''those who are likely to benefit from and those who are potentially subject to such rulemaking.'' One goal is to solicit ideas about alternatives, relevant costs and benefits (both quantitative and qualitative), and potential flexibilities. The NEA reaches out to interested and affected parties by soliciting comments.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

■ For the reasons stated in the preamble, the interim rule amending 45 CFR parts 1149 and 1158 which was published at 82 FR 27431 on June 15, 2017 is adopted as final without change.

Dated: December 7, 2017.

Jillian Miller,

Director of Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.

[FR Doc. 2017–26733 Filed 12–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

48 CFR Parts 604 and 642

[Public Notice 9777]

RIN 1400–AE06

Department of State Acquisition Regulation; Technical Amendment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (DOS) is amending the Department of State Acquisition Regulation (DOSAR) to add notice that the Department has an agreement with the Defense Contract Audit Agency, and to provide a procedural correction.

DATES: This final rule is effective on January 11, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520. Telephone: 703–516–1685. email: *KosarCM@state.gov.*

SUPPLEMENTARY INFORMATION: This document adds a new subpart 642.1, including section 642.101(b), to provide notice of the Department's agreement with the Defense Contract Audit Agency on the conduct of incurred cost audits for the Department's cost-reimbursement contracts. In addition, part 604 is amended to specify the office through which audits are coordinated, from the Office of the Inspector General to the Audit Team in the Office of Acquisitions Management's Quality Assurance Branch.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, as a rule of agency procedure or practice.

Regulatory Flexibility, Unfunded Mandates, SBREFA

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This determination was based on the fact that the amendment in this rule will not have any cost or administrative impact on offerors or contractors. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995. Finally, this rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*).

Executive Orders 12866, 13563 and 13771

The Department of State does not consider this rule to be an ''economically significant'' regulatory action under E.O. 12866. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563 and finds that the benefits of updating this rule outweigh any costs, which the Department assesses to be minimal. This final rule is not subject to the requirements of Executive Order 13771 because this final rule is related to agency organization, management or personnel, and has been determined to be non-significant within the meaning of Executive Order 12866.

Executive Orders 13132 and 13175

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law.

Paperwork Reduction Act

The rule imposes no new or revised information collections under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 604 and 642

Government procurement.

For the reasons stated in the preamble, the Department of State amends 48 CFR chapter 6 as follows:

■ 1. The authority citation for 48 CFR parts 604 and 642 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

PART 604—ADMINISTRATIVE MATTERS

■ 2. Amend section 604.804–70 by revising the second sentence of paragraph (d)(3) to read as follows:

604.804–70 Contract closeout procedures.

* * * * *

(d) * * *

(3) * * * Requests for audits, normally by the Defense Contract Audit Agency (DCAA) in accordance with the agreement DOS has with DCAA to conduct incurred cost audits, shall be submitted through the A/LM/AQM/BOD/QA Audit Team (see 642.101(b)). * * *

* * * * *

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 3. Add subpart 642.1, consisting of section 642.101, to read as follows:

Subpart 642.1—Contract Audit Services

642.101 Contract audit responsibilities.

(b) The Department has an interagency agreement with the Defense Contract Audit Agency (DCAA) to perform incurred cost audits on cost-reimbursement contracts. DCAA audits are requested through the A/LM/AQM/BOD/QA Audit Team.

Eric N. Moore,

Procurement Executive (Acting), Department of State.

[FR Doc. 2017–26712 Filed 12–11–17; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

48 CFR Parts 636, 637, and 652

[Public Notice 9703]

RIN 1400–AE04

Department of State Acquisition Regulation

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State (DOS) is amending the Department of State Acquisition Regulation (DOSAR) to provide new guidance prescribing more stringent safety requirements for certain overseas construction and services projects.

DATES: *Effective Date:* This interim rule is effective on January 11, 2018.

Comment Date: The Department of State will accept comments on this interim rule until February 12, 2018.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: KosarCM@state.gov.* You must include the RIN 1400–AE04 in the subject line of your message.
- *Mail (paper only):* Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520.
- Persons with access to the internet may view this interim rule and submit comments by visiting: *http://www.regulations.gov,* and searching for docket number DOS–2017–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520. Telephone 703–516–1685.

SUPPLEMENTARY INFORMATION: The purpose of this interim rule is to update 48 CFR part 636, section 636.513, Accident Prevention; 48 CFR part 637; and 48 CFR part 652, section 652.236–70, Accident Prevention. The Department of State (DOS) is rescinding the class deviation that authorized the substitution of DOSAR 652.236–70, Accident Prevention, for FAR 52.236–13 Accident Prevention, thus reinstating the requirement for use of FAR 52.236–13. Additionally, a new clause, ''Additional Safety Measures,'' is added to replace DOSAR 652.236–70. Specifically, the interim rule:

- Amends section 636.513 to reinstate the use of FAR 52.236–13, Accident Prevention, together with its Alternate I, and to prescribe the use of DOSAR clause 652.236–70, Additional Safety Measures.
- Amends part 637, to add a new section 637.102–71 to provide a cross-reference to 636.513 for services contracts.
- Amend section 652.236–70 to replace the current clause (''Accident Prevention'') with a new clause (''Additional Safety Measures'').

The Department has determined to issue an interim final rule due to the overriding importance of the safety of individuals associated with overseas DOS construction and services projects.

Regulatory Findings

Administrative Procedure Act

In accordance with 5 U.S.C. 553(a)(2), which exempts from the Administrative Procedure Act matters relating to contracts, the Department is publishing this rulemaking as an interim final rule, but is inviting public comment.

Regulatory Flexibility Act

This rulemaking is not a ''rule'' as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.;* therefore, that Act does not apply to it. However, the Department of State has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial

number of small entities. This determination was based on the fact that few of the DOS overseas construction contracts are performed by small business concerns. In FY 2015, only 19 of the 161 DOS overseas construction contractors to which this would apply were small business concerns.

Unfunded Mandates Act of 1995

This interim rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State does not consider this interim rule to be an ''economically significant regulatory action'' under Executive Order 12866.

The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of this rule outweigh any costs, which the Department assesses to be minimal. This interim final rule is not subject to the requirements of Executive Order 13771 because this final rule has been determined to be non-significant within the meaning of the Executive Order 12866.

Executive Order 13132

This interim rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this interim rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175

The Department has determined that this interim rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this interim rulemaking.

Paperwork Reduction Act

The interim rule removes a data collection requirement from Department of State Acquisition Regulation (DOSAR) information collection under OMB Control Number 1405–0050. The data collection requirement removed is DOSAR 652.236–70, Accident Prevention, which requires construction contractors to submit a written accident prevention plan. The removal of this requirement will reduce the total burden hours of this information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) by 150 hours.

This information collection renewal was approved by OMB on February 23, 2016. The removal of the data collection will not affect any other data collection requirements within this information collection.

60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR).

The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this document is to allow 60 days for public comment preceding submission of the collection to OMB.

Submit comments to the Office of Management and Budget (OMB) and Department of State, Office of the Procurement Executive, up to *February 12, 2018.*

Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the information collection title and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State. In addition, please direct a copy of your comments to the Department of State, Office of the Procurement Executive. You may submit comments by the following methods:
- *Email: kosarcm@state.gov.*
- *Regular Mail:* Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520.

You must include the information collection title and the OMB control number in any correspondence.

Direct requests for additional information regarding the collection listed in this document, including requests for copies of the proposed collection instrument and supporting documents, to Ms. Colleen Kosar, U.S. Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 1060, State Annex Number 15, Washington, DC 20520; who may be reached on (703) 516–1685.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR).
- *OMB Control Number:* 1405–0050.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE).
- *Form Number:* No Form.
- *Respondents:* Any business, other for-profit, individual, not-for-profit, or household.
- *Estimated Number of Respondents:* 1647.
- *Estimated Number of Responses:* 2600.
- *Average Time per Response:* 98 hours.
- *Total Estimated Burden Time:* 253,764 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for

this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to the contract; dealing with unsatisfactory performance; and closing out the contract upon its completion. This program collects information pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302), the Omnibus Diplomatic Security and Antiterrorism Act (22 U.S.C. 4852), and the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864).

Methodology: Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or email), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and related to the occurrence of specific circumstances.

List of Subjects in 48 CFR Parts 636, 637 and 652

Government procurement.

For the reasons stated in the preamble, the Department of State amends 48 CFR chapter 6 as follows:

■ 1. The authority citation for 48 CFR parts 636, 637 and 652 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 2. Section 636.513 is revised to read as follows:

636.513 Accident prevention.

(a) The contracting officer shall insert the clause at 652.236–70, Additional Safety Measures in all solicitations and contracts that include FAR 52.236–13, Accident Prevention, Alternate I, *i.e.:*

(1) When a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold and the contract will involve work of a long duration or hazardous nature; or

(2) When a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate, such as contracts for building maintenance, building operations or infrastructure repair.

(b) The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (a) of the clause, or if the contracting officer has any questions regarding safety issues.

PART 637—SERVICE CONTRACTING

■ 3. Section 637.102–71 is added to read as follows:

637.102–71 Safety considerations.

When contracting for services to be performed overseas, always consider 636.513(b) and FAR 36.513(b), and consult with technical representatives to determine whether special precautions are appropriate, such as when the services are for building operations, building maintenance or infrastructure repairs.

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 652.236–70 is revised to read as follows:

652.236–70 Additional Safety Measures.

As prescribed in 636.513, insert the following clause.

ADDITIONAL SAFETY MEASURES (OCT 2017)

In addition to the safety/accident prevention requirements of FAR 52.236–13, Accident Prevention Alternate I, the contractor shall comply with the following additional safety measures.

(a) *High risk activities.* If the project contains any of the following high risk activities, the contractor shall follow the section in the latest edition, as of the date of the solicitation, of the U.S. Army Corps of Engineers Safety and Health manual, EM 385–1–1, that corresponds to the high risk activity. Before work may proceed, the contractor must obtain approval from the COR of the written safety plan required by FAR 52.236–13, Accident Prevention Alternate I (see paragraph (f) of this clause), containing specific hazard mitigation and control techniques.

(1) Scaffolding;

(2) Work at heights above 1.8 meters;

(3) Trenching or other excavation greater than one (1) meter in depth;

(4) Earth-moving equipment and other large vehicles;

(5) Cranes and rigging;

(6) Welding or cutting and other hot work;

(7) Partial or total demolition of a structure;

(8) Temporary wiring, use of portable electric tools, or other recognized electrical hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(9) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.);

(10) Hazardous materials—a material with a physical or health hazard including but not limited to, flammable, explosive, corrosive, toxic, reactive or unstable, or any operations, which creates any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(11) Hazardous noise levels as required in EM 385–1 Section 5B or local standards if more restrictive.

(b) *Safety and health requirements.* The contractor and all subcontractors shall comply with the latest edition of the U.S. Army Corps of Engineers Safety and Health manual EM 385–1–1, or OSHA 29 CFR part 1910 or 1926 if no EM 385–1–1 requirements are applicable, and the accepted contractor's written safety program.

(c) *Mishap reporting.* The contractor is required to report *immediately* all mishaps to the COR and the contracting officer. A ''mishap'' is any event causing injury, disease or illness, death, material loss or property damage, or incident

causing environmental contamination. The mishap reporting requirement shall include fires, explosions, hazardous materials contamination, and other similar incidents that may threaten people, property, and equipment.

(d) *Records.* The contractor shall maintain an accurate record on all mishaps incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(e) *Subcontracts.* The contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) *Written program.* The plan required by paragraph (f)(1) of the clause entitled ''Accident Prevention Alternate I'' shall be known as the Site Safety and Health Plan (SSHP) and shall address any activities listed in paragraph (a) of this clause, or as otherwise required by the contracting officer/COR.

(1) The SSHP shall be submitted at least 10 working days prior to commencing any activity at the site.

(2) The plan must address developing activity hazard analyses (AHAs) for specific tasks. The AHAs shall define the activities being performed and identify the work sequences, the specific anticipated hazards, site conditions, equipment, materials, and the control measures to be implemented to eliminate or reduce each hazard to an acceptable level of risk. Work shall not begin until the AHA for the work activity has been accepted by the COR and discussed with all engaged in the activity, including the Contractor, subcontractor(s), and Government on-site representatives.

(3) The names of the Competent/Qualified Person(s) required for a particular activity (for example, excavations, scaffolding, fall protection, other activities as specified by EM 385–1–1) shall be identified and included in the AHA. Proof of their competency/qualification shall be submitted to the contracting officer or COR for acceptance prior to the start of that work activity. The AHA shall be reviewed and modified as necessary to address changing site conditions, operations, or change of competent/qualified person(s).

(End of clause)

Eric N. Moore,

Procurement Executive (Acting), Department of State.

[FR Doc. 2017–26711 Filed 12–11–17; 8:45 am]

BILLING CODE 4710–24–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 801

[Docket No.: NTSB–GC–2017–0004]

RIN 3147–AA18

Public Availability of Information

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Interim final rule.

SUMMARY: The NTSB is issuing an interim final rule that revises 49 CFR part 801, ''Public Availability of Information,'' to implement the substantive and procedural changes to the Freedom of Information Act (FOIA), identified in the Open Government Act of 2007, December 31, 2007, the Open FOIA Act of 2009, October 28, 2009, and the FOIA Improvement Act of 2016, June 30, 2016. These revisions to the NTSB FOIA regulation are being issued as an interim final rule to ensure that an updated regulation is in place as soon as practicable to implement the Acts referenced above.

DATES: This interim final rule is effective on December 12, 2017. The NTSB will accept written comments on this interim final rule on or before February 12, 2018.

ADDRESSES: A copy of this interim final rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW, Washington, DC 20594–003. Alternatively, a copy is available on the government-wide website on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2017–0004).

You may send comments identified by Docket ID Number NTSB–GC–2017–0004 using any of the following methods:

1. *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

2. *Mail:* Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East SW, Washington, DC 20594–003.

3. *Facsimile:* Fax comments to 202–314–6090.

4. *Hand Delivery:* Bring comments to 490 L'Enfant Plaza East SW, 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except legal public holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kathleen Silbaugh, General Counsel, (202) 314–6016.

SUPPLEMENTARY INFORMATION:

I. Background

The FOIA provides that any person has a right, enforceable in federal court, to obtain access to federal agency records, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The FOIA also sets forth the process for obtaining federal agency records and requires agencies to promulgate regulations addressing the requirements for making initial requests and appeals, the fees an agency may charge, and the standards and procedures for regular and expedited processing of requests.

Since the NTSB last revised 49 CFR part 801 on April 16, 2007, 72 FR 18914, the FOIA was amended three times: In the Open Government Act of 2007, Public Law 110–175, 121 Stat. 2524, December 31, 2007 (hereinafter ''2007 Act''), the Open FOIA Act of 2009, Public Law 111–83, 123 Stat. 2142, October 28, 2009 (hereinafter ''2009 Act''), and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538, June 30, 2016 (hereinafter ''2016 Act''). The 2016 Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions. The NTSB is revising part 801 to (1) implement the 2007, 2009, and 2016 statutory amendments, and (2) update and clarify the regulation pursuant to the NTSB's plan to review and revise all of its regulations. *NTSB Plan for Retrospective Analysis of Existing Rules,* 77 FR 37865 (June 25, 2012); *Retrospective Analysis of Existing Rules; Notification,* 78 FR 1193, 1194 (January 8, 2013).

The NTSB is issuing this regulation as an interim final rule to ensure that the agency implements the 2016 Act as soon as practicable. In the revised regulation, the NTSB has adopted, where appropriate, the template for agency FOIA regulations released by the Office of Information Policy at the Department of Justice.

II. Guidelines for Adoption of Interim Rules

The NTSB has concluded that good cause exists, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B) and (d)(3), to waive the APA's notice-and-comment and delayed-effective-date requirements and to issue this regulation as an interim final rule. The amendments to part 801 primarily address how the NTSB will implement the 2007, 2009, and 2016 Acts, and make clarifying and general updates to the existing regulation but do not fundamentally alter or change the regulation's nature or scope. Further, in light of the significant need for immediate guidance regarding the changes made under the 2016 Act, the NTSB has determined that notice-and-comment rulemaking is impracticable and unnecessary. The revisions are noncontroversial, and no opposition or significant adverse comments are expected. Nevertheless, the NTSB is providing the public a 60-day period following publication of the interim final rule to submit comments. The NTSB will consider comments received during the comment period, and will alter the issued final rule if the comments warrant alteration.

III. Summary of Changes to Part 801 Made by This Interim Final Rule

A. Proactive Disclosures

The revisions add to § 801.10, ''General,'' a list of proactive disclosures pursuant to 5 U.S.C. 552(a)(2), (a)(5), (e)(3), and (g). Pursuant to the 2016 Act, § 801.10 explains that the proactive disclosures are available on the NTSB's Website, and specifies the categories of agency records that must be made available in its electronic reference room and its public reference room at NTSB headquarters. These proactively disclosed records include records that have been disclosed pursuant to a FOIA request and have been requested at least three times.

B. Electronic Availability of Information

Throughout part 801, pursuant to the 2016 Act, the revisions emphasize information that is available on the NTSB's Website. Section 801.10 also explains that the NTSB maintains a public access link for requesters to submit and track FOIA requests electronically.

Pursuant to the 2007 Act, the definition of ''record'' in § 801.3 specifies that agency records include information maintained in an electronic format and information maintained by contractors.

C. Time Limits

Section 801.20 provides definitions and procedures for deciding requests for expedited processing. Sections 801.21 and 801.23 clarify the circumstances in which the NTSB may extend the time to make an initial determination, and the procedures to follow when extending the time. Pursuant to the 2016 Act, section 801.22 extends the time to appeal an initial determination to the NTSB Managing Director from 20 days to 90 days.

D. Requester Assistance

Pursuant to the 2007 Act, as amended by the 2016 Act, sections 801.21–.23 and 801.60 permit requesters to seek dispute resolution services from the NTSB FOIA Public Liaison, or the Office of Government Information Services (OGIS) in the National Archives and Records Administration, in connection with initial and final determinations, time extensions, and fee assessments. Sections 801.20 and 801.23 also allow a requester to modify a request to qualify for faster processing.

E. Fees

Pursuant to the 2007 Act, as amended by the 2016 Act, section 801.60 prohibits the NTSB from charging search fees, or for some requesters, duplication fees, if the NTSB fails to comply with the time limits, including extensions, for processing a request. If the NTSB fails to comply with a time limit for processing a request, it may assess search fees only if unusual circumstances exist, the request involves more than 5,000 responsive pages; and the NTSB has attempted in good faith to work with the requester to limit the scope of the request.

Section 801.60 also prohibits the NTSB from requiring advance payment of fees unless the requester has previously failed to pay or the fee is expected to exceed $250;

F. Exemptions

Pursuant to the 2016 Act, the NTSB will withhold records under a FOIA exemption only if the NTSB reasonably foresees that disclosure would harm an interest protected by the exemption. The NTSB will partially disclose a record if a releasable portion of the record is reasonably segregable from a portion that is being withheld.

Also, pursuant to the 2016 Act, section 801.55, which implements the interagency and intra-agency exchanges exemption under 5 U.S.C. 552(b)(5), provides that the deliberative process privilege does not apply to records created 25 years or more before the FOIA request.

Pursuant to the 2009 Act, section 801.53, which implements the FOIA exemption at 5 U.S.C. 552(b)(3) for records exempt by statute from disclosure, provides that, to exempt information from disclosure under the FOIA, statutes enacted after the 2009 Act must specifically cite to section 552(b).

IV. Regulatory Analysis

This rule does not require an assessment of its potential costs and benefits under section 6(a)(3) of E.O. 12866, *Regulatory Planning and Review,* 58 FR 51735 (Sept. 30, 1993), because it is not a ''significant regulatory action'' under section 3(f) of that Order. Thus, the Office of Management and Budget has not reviewed this rule under E.O. 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–71, or the National Environmental Policy Act, 42 U.S.C. 4321–47.

In addition, under the Regulatory Flexibility Act, 5 U.S.C. 601–12, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities. The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 4, 1999).

This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, *Civil Justice Reform,* 61 FR 4729 (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

NTSB has evaluated this rule under: E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* 53 FR 8859 (Mar. 15, 1988); E.O. 13045, *Protection of Children from Environmental Health Risks and Safety Risks,* 62 FR 19885 (Apr. 21, 1997); E.O. 13175, *Consultation and Coordination with Indian Tribal Governments,* 65 FR 67249 (Nov. 6, 2000); E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* 66 FR 28355 (May 18, 2001); and the National Technology Transfer and Advancement Act, Public Law 104–113, 110 Stat. 775, Mar. 7,

1996. The NTSB has concluded that this interim final rule neither violates, nor requires further consideration under those Orders and statutes.

The NTSB invites comments relating to any of the foregoing determinations and notes the most helpful comments reference a specific portion of this interim final rule, explain the reason for any recommended change, and include supporting data.

List of Subjects in 49 CFR Part 801

Archives and records; Freedom of information.

Accordingly, for the reasons stated in the Preamble, the NTSB is revising 49 CFR part 801 to read as follows:

PART 801—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—Applicability and Policy

Sec.
801.1 Applicability.
801.2 Presumption of openness.
801.3 Definitions.

Subpart B—Administration

801.10 General.
801.11 Segregability of records.
801.12 Protection of records.

Subpart C—Time Limits

801.20 Processing of requests.
801.21 Initial determination.
801.22 Final determination.
801.23 Extension.

Subpart D—Accident Investigation Records

801.30 Records from accident investigations.
801.31 Public hearings regarding investigations.
801.32 Accident reports.

Subpart E—Other Agency Documents

801.40 NTSB rules.
801.41 Reports to Congress.

Subpart F—Exemption From Public Disclosure

801.50 Exemptions from disclosure.
801.51 National defense and foreign policy secrets.
801.52 Internal personnel rules and practices of the NTSB.
801.53 Records exempt by statute from disclosure.
801.54 Trade secrets and commercial or financial information.
801.55 Interagency and intra-agency exchanges.
801.56 Unwarranted invasion of personal privacy.
801.57 Records compiled for law enforcement purposes.
801.58 Records for regulation of financial institutions.
801.59 Geological records.

Subpart G—Fee Schedule

801.60 Fee schedule.
801.61 Appeals of fee determinations.

Authority: 49 U.S.C. 1113(f); 5 U.S.C. 552; 18 U.S.C. 641, 2071; 31 U.S.C. 3717, 9701; 44 U.S.C. Chapters 21, 29, 31, and 33.

Subpart A—Applicability and Policy

§ 801.1 Applicability.

(a) This part contains the rules that the National Transportation Safety Board (NTSB) follows in processing requests for records under the Freedom of Information Act, as amended (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about public access to records maintained by the NTSB.

(b) This part also provides for document services and the fees for such services, pursuant to 31 U.S.C. 9701.

(c) This part applies only to records existing when the request for the information is made. The NTSB is not required to create records for the sole purpose of responding to a FOIA request.

(d) Subpart F of this part describes records that are exempt from public disclosure.

§ 801.2 Presumption of openness.

(a) In implementing the FOIA, it is the policy of the NTSB to make information available to the public to the greatest extent possible, consistent with the mission of the NTSB. The NTSB will withhold records under the FOIA only when the NTSB reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or is prohibited by law. Whenever the NTSB determines that full disclosure of a requested record is not possible, the NTSB will consider whether partial disclosure is possible and will take reasonable steps to segregate and release nonexempt material. Information the NTSB routinely provides to the public as part of a regular NTSB activity (such as press releases and information disclosed on the NTSB's public Website) may be provided to the public without compliance with this part.

(b) The NTSB will release on its website a ''public docket'' containing documentation that the agency deemed pertinent to the investigation. Requesters may access these public dockets without submitting a FOIA request. The NTSB encourages all requesters to review the public docket materials before submitting a FOIA request.

§ 801.3 Definitions.

The following definitions apply in this part:

Chairman means the Chairman or Acting Chairman of the NTSB.

FOIA Public Liaison means a supervisory official, designated by the Chief FOIA Officer, who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

Managing Director means the Managing Director of the NTSB.

Non-docket items include records from an accident that are not directly pertinent to the investigation, and are not in the public docket.

Public Docket includes a collection of records from an accident investigation that the agency deemed pertinent to the investigation.

Record, document, or any other term used to reference information includes:

(1) Any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved. In this part, ''document'' and ''record'' have the same meaning;

(2) Any information that would be an agency record subject to the requirements of this section when maintained by the NTSB in any format, including an electronic format; and

(3) Any information described under subparagraphs (1) or (2) that is maintained for the NTSB by an entity under Government contract, for the purposes of records management.

Redact refers to the act of making a portion of text illegible by placing a black mark on top of the text.

Requester means any person, as defined in 5 U.S.C. 551(2), who submits a request pursuant to the FOIA.

Subpart B—Administration

§ 801.10 General.

(a) The NTSB's Chief FOIA Officer provides high level oversight and support to NTSB's FOIA programs, and recommends adjustments to agency practices, personnel, and funding as may be necessary to improve FOIA administration. The Chief FOIA Officer is responsible for the initial determination of whether to release records within the 20-working-day time limit, or the extension, specified in the Freedom of Information Act. The Chief FOIA Officer is also responsible for designating one or more FOIA Public Liaisons.

(b) The NTSB's Chief, Records Management Division:

(1) Is responsible for the custody and control of all NTSB records required to be preserved under the Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

(2) Maintains a public reference room and an electronic reading room in

accordance with 5 U.S.C. 552(a)(2). The NTSB's public reference room is located at 490 L'Enfant Plaza SW, Washington, DC. The NTSB's electronic reading room is located on the NTSB's FOIA website, found at *http://www.ntsb.gov/.*

(3) Maintains a public access link on the NTSB's FOIA Website for requesters to electronically submit a FOIA request and track the status of the request.

(c) The NTSB maintains in its electronic reading room and makes available for public inspection in its public reference room:

(1) Records that have been provided pursuant to a FOIA request, and

(i) Have been requested at least three times or

(ii) Are likely to be the subject of repeat requests.

(2) A general index of the records in paragraph (c)(1) of this section;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of appeals under parts 821 and 825 of this chapter.

(4) Statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**;

(5) Administrative staff manuals and instructions to staff that affect a member of the public;

(6)(i) The annual report submitted to the Attorney General and the Office of Government Information Services in the National Archives and Records Administration (OGIS), under 5 U.S.C. 552(e)(1); and

(ii) The raw statistical data used in the annual report in an aggregate, searchable, and downloadable format, provided without charge, license, or registration requirement;

(7) A guide for requesting records or information from the NTSB that includes an index of the agency's major information systems, major information and record locator systems, concise descriptions of FOIA exemptions, and general categories of NTSB records to which the exemptions apply; and

(8) A record of the votes of each Member in NTSB proceedings.

(d) FOIA requests for records or information not publicly available on the NTSB Website may be submitted electronically by email or through the public access link, or in writing to: National Transportation Safety Board, Attention: FOIA Requester Service Center, CIO–40, 490 L'Enfant Plaza SW, Washington, DC 20594–003. All requests must reasonably identify the record requested and contain the name, address, email address, and telephone number of the person making the request. A requester must inform the NTSB of changes to the requester's contact information. Requests mailed to the NTSB must prominently display the letters ''FOIA'' to distinguish the FOIA request from other types of document requests. For requests regarding an investigation of a particular accident, requesters should include the date and location of the accident, as well as the NTSB investigation number.

(e) In response to broad requests for records regarding a particular investigation, the FOIA Office will notify the requester that a public docket has been or will be opened for the investigation, and attempt to clarify whether the information in the docket satisfies the request.

(f) The NTSB will not release records originally generated by other agencies or entities. Instead, the NTSB will refer such requests for other agencies' records to the appropriate agency, which will make a release determination upon receiving and processing the referred request.

(g) Where a requester seeks a record on behalf of another person, and the record contains that person's personal information protected by 5 U.S.C. 552(b)(6) and § 801.56, the personal information will not be provided to the requester unless the requester submits a notarized statement of consent from the person whose personal information is contained in the record.

(h) In general, the NTSB will deny requests for records concerning a pending investigation, pursuant to appropriate exemptions under the FOIA. The FOIA Office will notify the requester of this denial in accordance with § 801.21(b), and provide the requester additional information regarding how the requester may receive information on the investigation once the investigation is complete.

§ 801.11 Segregability of records.

The initial decision of the FOIA Officer will include a determination of segregability. If it is reasonable to do so, the exempt portions of a record will be segregated and, where necessary, redacted, and the nonexempt portions will be sent to the requester.

§ 801.12 Protection of records.

No person may, without permission, remove from the place where it is made available any record made available for inspection or copying under § 801.10(c). Removing, concealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record is deemed a criminal offense pursuant to 18 U.S.C. 641, 2071(a).

Subpart C—Time Limits

§ 801.20 Processing of requests.

(a) *Multi-track processing.* The FOIA Office processes FOIA requests in one of three tracks:

(1) Track 1: Requests that meet the criteria for expedited processing, or requests that seek records that have been produced in response to a prior request.

(2) Track 2: Requests that do not involve voluminous records or lengthy consultations with other entities.

(3) Track 3: Requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

(b) *Expedited processing.* (1) A requester may submit a statement demonstrating with reasonable particularity that the requester has a compelling need for expedited processing in Track 1. The requester must certify that the statement is true and correct to the best of the requester's knowledge. Within 10 calendar days after receipt of the statement, the FOIA Office will inform the requester whether the request qualifies for expedited processing, and if not, provide the requester with the information in § 801.21(b).

(2) In this section, ''compelling need'' means:

(i) That a failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(3) The requester may appeal the FOIA Office's decision regarding expedited processing to the Managing Director within 90 calendar days. The Managing Director will decide the appeal on an expedited basis, and no later than 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of the appeal. The final determination will notify the requester of the statutory right to seek judicial review of the determination pursuant to 5 U.S.C. 552(a)(6)(E)(iii), and will inform the requester of the dispute resolution services offered by OGIS.

§ 801.21 Initial determination.

(a) The NTSB FOIA Officer will make an initial determination as to whether to comply with the request within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the request is received.

(b) Upon the FOIA Office's receipt of a FOIA request, the time limit is tolled while the FOIA Office seeks reasonable information from the requester:

(1) About the scope of the request, such as whether docket items and other publicly available information on the NTSB website satisfy the request; and

(2) Necessary to resolve fee assessment issues.

(c) If unusual circumstances exist, this time limit may be extended up to 10 additional days (excluding Saturdays, Sundays, and legal public holidays) in accordance with § 801.23. The requester will be notified immediately of an extension in accordance with § 801.23. If a determination is made to release the requested record(s), such record(s) will be made available promptly.

(d) If the FOIA Officer determines not to release the record(s), the FOIA Office will notify the requester of:

(1) The reason for the determination;

(2) The right to appeal the determination to the Managing Director within 90 calendar days;

(3) The name and title or positions of each person responsible for the denial of the request;

(4) The right to seek dispute resolution services from the NTSB's FOIA Public Liaison or OGIS.

§ 801.22 Final determination.

Requesters seeking an appeal of the FOIA Officer's initial determination must send a written appeal to the NTSB's Managing Director within 90 calendar days. The NTSB's Managing Director will determine whether to grant or deny any appeal within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended by as many as 10 additional days (excluding Saturdays, Sundays, and legal public holidays), in accordance with § 801.23. The final determination will notify the requester of the statutory right to seek judicial review of the determination pursuant to 5 U.S.C. 552(a)(4)(B), and will inform the requester of the dispute resolution services offered by OGIS.

§ 801.23 Extension.

(a) In unusual circumstances as specified in this section, the time limits prescribed in either § 801.21 or § 801.22 may be extended by no more than 10 days (excluding Saturdays, Sunday, and legal public holidays) by providing written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched.

(b) If the request cannot be processed within the extended time limit specified in paragraph (a) of this section, the requester will be:

(1) Notified in writing;

(2) Given an opportunity to limit the scope of the request so that it may be processed within that time limit, or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request; and

(3) Advised of the requester's right to seek assistance from the NTSB's FOIA Public Liaison and seek dispute resolution services from OGIS.

(c) As used in this paragraph (c), ''unusual circumstances,'' as they relate to any delay that is reasonably necessary to the proper processing of the particular request, means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine and process a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need to consult with another agency that has a substantial interest in the disposition of the request or with two or more components of the agency having substantial subject-matter interest therein.

Subpart D—Accident Investigation Records

§ 801.30 Records from accident investigations.

Upon completion of an accident investigation, the NTSB will compile a public docket containing investigators' factual reports, and documents and exhibits that the agency deemed pertinent to the investigation. The Chief, Records Management Division, will then make the docket available on the NTSB Website and available for public inspection and copying in the NTSB's public reference room.

§ 801.31 Public hearings regarding investigations.

Within approximately four (4) weeks after a public investigative hearing conducted in accordance with part 845, subpart A, of this chapter, the Chief, Records Management Division, will make the hearing transcript available in the electronic reading room and the public reference room. On or before the date of the hearing, the Chief, Records Management Division, will make the exhibits introduced at the hearing available on the NTSB Website and available for public inspection and copying in the NTSB's public reference room.

§ 801.32 Accident reports.

(a) The NTSB will report the facts, conditions, circumstances, and its determination of the probable causes of U.S. civil transportation accidents, in accordance with 49 U.S.C. 1131(e).

(b) These reports will be made available on the NTSB Website and available for public inspection and copying in the NTSB's public reference room.

Subpart E—Other Agency Documents

§ 801.40 NTSB rules.

The NTSB's rules are published in the Code of Federal Regulations, Title 49, Chapter VIII.

§ 801.41 Reports to Congress.

The NTSB submits its annual report to Congress, in accordance with 49 U.S.C. 1117. The report will be available on the NTSB's website, found at *http://www.ntsb.gov.* Interested parties may purchase the report from the U.S. Government Publishing Office or review it in the NTSB's public reference room. All other reports or comments to Congress will be available in the NTSB's electronic reading room and in its public reference room for inspection or by ordering a copy after issuance.

Subpart F—Exemption From Public Disclosure

§ 801.50 Exemptions from disclosure.

Title 5 U.S.C. 552(a) and (b) exempt certain records from public disclosure. Examples of records given in this subpart included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the applicable exemption.

§ 801.51 National defense and foreign policy secrets.

Pursuant to 5 U.S.C. 552(b)(1), national defense and foreign policy secrets established by Executive Order, as well as properly classified documents, are exempt from public disclosure. Requests to the NTSB for such records will be transferred to the source agency as appropriate, where such classified records are identified. (See, *e.g.,* Executive Order 12,958, as amended on March 25, 2003.)

§ 801.52 Internal personnel rules and practices of the NTSB.

Pursuant to 5 U.S.C. 552(b)(2), the following records are exempt from disclosure under FOIA:

(a) Records relating solely to internal personnel rules and practices, including memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training,

promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

(b) Records regarding:

(1) Internal matters of a relatively trivial nature that have no significant public interest, and

(2) Predominantly internal matters, the release of which would risk circumvention of a statute or agency regulation.

§ 801.53 Records exempt by statute from disclosure.

Pursuant to 5 U.S.C. 552(b)(3), the NTSB will not disclose records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(a)(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(b) If enacted after the date of enactment of the Open FOIA Act of 2009, Public Law 111–83, Title V, section 564, 123 Stat. 2142, Oct. 28, 2009, specifically cites to 5 U.S.C. 552(b)(3).

§ 801.54 Trade secrets and commercial or financial information.

Pursuant to 5 U.S.C. 552(b)(4), trade secrets and items containing commercial or financial information that are obtained from a person and are privileged or confidential are exempt from public disclosure.

§ 801.55 Interagency and intra-agency exchanges.

(a) Pursuant to 5 U.S.C. 552(b)(5), any record prepared by an NTSB employee for internal Government use is exempt from public disclosure to the extent that it contains—

(1) Opinions made in the course of developing official action by the NTSB but not actually made a part of that official action, or

(2) Information concerning any pending NTSB proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the NTSB. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official NTSB action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include, but are not limited to, staff papers containing advice, opinions, or suggestions preliminary to a decision or action; preliminary notes; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged in preparation for anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the NTSB; records of inspections, investigations, and surveys pertaining to internal management of the NTSB; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

(d) The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

§ 801.56 Unwarranted invasion of personal privacy.

Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of the person's personal privacy.

§ 801.57 Records compiled for law enforcement purposes.

Pursuant to 5 U.S.C. 552(b)(7), any records compiled for law or regulatory enforcement are exempt from public disclosure to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices, or would endanger the life or security of law enforcement personnel.

§ 801.58 Records for regulation of financial institutions.

Pursuant to 5 U.S.C. 552(b)(8), records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

§ 801.59 Geological records.

Pursuant to 5 U.S.C. 552(b)(9), records concerning geological wells are exempt from public disclosure.

Subpart G—Fee Schedule

§ 801.60 Fee schedule.

(a) *Authority.* Pursuant to 5 U.S.C. 552(a)(4)(i) and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987, the NTSB may charge certain fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, or where a waiver or reduction of fees is granted under paragraph (e) of this section. The NTSB does not require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the NTSB determines that the fee will exceed $250.00. A requester must pay fees in accordance with the instructions provided on the invoice the FOIA Office sends to the requester.

(b) *Definitions.* For purposes of this section:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests. This includes the furtherance of commercial interests through litigation. When it appears that the requester will use the requested records for a commercial purpose, either because of the nature of the request or because the NTSB has reasonable cause to doubt a requester's stated use, the NTSB will provide the requester with a reasonable opportunity to submit further clarification.

Direct costs mean those expenses that an agency incurs in searching for, reviewing, and duplicating records in response to a FOIA request. This includes the salaries of NTSB employees performing the work, as listed below, but does not include overhead expenses such as the costs of office space.

Duplication means the copying of a record, or of the information contained in a record, in response to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Educational institution means any school, or institution of vocational education that operates a program of scholarly research. In order for a requester to demonstrate that their request falls within the category of an ''educational institution,'' the requester must show that the request is authorized by the qualifying institution and that the requester does not seek the records for commercial use, but only to further scholarly research.

Representative of the news media or *news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization (for example, a journalist may submit a copy of a publication contract for which the journalist needs NTSB records).

Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review also includes processing the record(s) for disclosure, which includes redacting and otherwise preparing releasable records for disclosure. Review does not include time spent resolving legal or policy issues regarding the application of exemptions nor will the NTSB charge for review during the administrative appeal stage, if applicable. The NTSB may recover review costs even if the NTSB ultimately does not release the record(s).

Search means the process of looking for and retrieving records or information within the scope of a request. Search includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve electronic records. The NTSB will make an effort to conduct such searches in the least expensive manner.

(c) *Fees.* In responding to FOIA requests, the NTSB will charge the following fees, subject to the limitations in paragraph (d) of this section, unless a waiver or reduction of fees has been granted under paragraph (e) of this section:

(1) *Search.* (i) The NTSB will charge search fees except for a request from an educational institution, a noncommercial scientific institution, or a news media representative. The NTSB may charge for time spent searching even if the NTSB does not locate any responsive record or if the NTSB withholds the record(s) located because such record(s) are exempt from disclosure.

(ii) In searching for and retrieving records, the NTSB will charge $4.00 for each quarter of an hour spent by administrative personnel, $7.00 for each quarter of an hour spent by professional personnel, and $10.25 for each quarter of an hour spent by management personnel.

(2) *Duplication.* (i) The NTSB will charge duplication fees. The NTSB will honor a requester's preference for receiving a record in a particular format when the FOIA Office can readily reproduce it in the format requested.

(ii) The NTSB will charge $0.10 per page for the duplication of a standard-size paper record. For other forms of duplication, the NTSB will charge the direct costs of the duplication.

(iii) Where the NTSB certifies records upon request, the NTSB will charge the direct cost of certification.

(3) *Review.* For a commercial use request, the NTSB will charge fees for the initial review of a record to determine whether the record falls within the scope of a request and whether the record is exempt from disclosure. The NTSB will not charge for subsequent review of the request and responsive record. For example, in general, the NTSB will not charge additional fees for review at the administrative appeal level when the NTSB has already applied an exemption. The NTSB will charge review fees at the same rate as those charged for a search under paragraph (c)(1)(ii).

(d) *Limitations on charging fees.* (1) The NTSB will not charge fees if it fails to comply with the time limits in §§ 801.21 or 801.22, including an extension of time pursuant to § 801.23(a), except:

(i) If the NTSB determines there are unusual circumstances, as defined by 5 U.S.C. 552(a)(6)(B)(iii) and § 801.23(c), and more than 5,000 pages are responsive to the request, the FOIA Office may charge fees if timely written notice of the unusual circumstances has been provided to the requester and the FOIA Office has discussed with the requestor (or made not less than three good-faith attempts to do so) how the requester could limit the scope of the request.

(ii) If a court determines there are exceptional circumstances, as defined by 5 U.S.C. 552(a)(6)(C), a failure to comply with the time limits will be excused for the length of time provided by the court order.

(2) The NTSB will not charge a fee for notices, decisions, orders, etc. provided to persons acting as parties in the investigation under the procedures set forth in part 831 of this chapter, or where required by law to be served on a party to any proceeding or matter before the NTSB. Likewise, the NTSB will not charge fees for requests made by family members of accident victims, when the NTSB has investigated the accident that is the subject of the FOIA request.

(3) The NTSB will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for commercial use, the NTSB will provide the following items without charge:

(i) The first 100 pages of duplication (or the cost equivalent) of a record; and

(ii) The first two hours of search (or the cost equivalent) for a record.

(5) Whenever the total fee calculated under paragraph (c) of this section is $14.00 or less for any request, the NTSB will not charge a fee.

(6) The NTSB will not charge fees for ordinary packaging and mailing costs.

(7) When the FOIA Office determines or estimates that fees to be charged under this section will amount to more than $25.00, the Office will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for the search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If the FOIA Office is able to estimate only a portion of the expected fee, the FOIA Office will advise the requester that the estimated fee may be only a portion of the total fee. Where the FOIA Office notifies a requester that the actual or estimated fees will exceed $25.00, the NTSB will not expend additional agency resources on the request until the requester agrees in writing to pay the anticipated total fee. The NTSB does not accept payments in installments.

(8) In circumstances involving a total fee that will exceed $250.00, or if the requester has previously failed to pay fees in a timely fashion, the NTSB may require the requester to make an advance payment or deposit of a specific amount before beginning to process the request. If the requester does not pay the advance payment within 30 calendar dates after the date of the FOIA Office's fee determination, the request will be closed.

(9) The NTSB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided at 31 U.S.C. 3717 and will accrue from the date of the billing until the NTSB receives payment. The NTSB will follow the provisions of the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(10) Where the NTSB reasonably believes that a requester or group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the NTSB may aggregate those requests and charge accordingly.

(11) The NTSB will make the FOIA Public Liaison available to assist the requester in reformulating a request to meet the requester's needs at a lower cost.

(e) *Requirements for waiver or reduction of fees.* (1) For fee purposes, the NTSB will determine, whenever reasonably possible, the use to which a requester will put the requested records. The NTSB will furnish records responsive to a request without charge, or at a reduced charge, where the NTSB determines, based on all available information, that the requester has shown that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government; and

(ii) Disclosure of the requested information is not primarily in the commercial interest or for the commercial use of the requester.

(2) In determining whether disclosure of the requested information is in the public interest, the NTSB will consider the following factors:

(i) Whether the subject of the requested records concerns identifiable operations or activities of the Federal Government, with a connection that is direct and clear, and not remote or attenuated. In this regard, the NTSB will consider whether a requester's use of the documents would enhance transportation safety or contribute to the NTSB's programs.

(ii) Whether the portions of a record subject to disclosure are meaningfully informative about government operations or activities. The disclosure of information already in the public domain, in either a duplicative or substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) Whether disclosure of the requested information would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The NTSB will consider a requester's expertise in the subject area and ability to effectively convey information to the public.

(iv) Whether the disclosure is likely to enhance the public's understanding of government operations or activities.

(3) The NTSB's decision to designate the FOIA request as commercial will be made on a case-by-case basis based on the NTSB's review of the requester's intended use of the information. The NTSB will provide the requester with a reasonable opportunity to submit further clarification. In determining whether the request is primarily in the commercial interest of the requester, the NTSB will consider the following factors:

(i) The existence and magnitude of any commercial interest the requester may have, or of any person on whose behalf the requester may be acting. The NTSB will provide requesters with an opportunity in the administrative process to submit explanatory information regarding this consideration.

(ii) Whether the commercial interest is greater in magnitude than any public interest in disclosure.

(4) Additionally, the NTSB may, at its discretion, waive search, duplication, and review fees for qualifying foreign countries, international organizations, nonprofit public safety entities, state and federal transportation agencies, and colleges and universities, after approval by the Chief, Records Management Division.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, the NTSB will grant a waiver for those particular records.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (e)(2) and (3) of this section, insofar as they apply to each request. The NTSB will exercise its discretion to consider the cost-effectiveness of its use of administrative resources in determining whether to grant waivers or reductions of fees.

(f) *Services available free of charge.* (1) The following documents are available without commercial reproduction cost until limited supplies are exhausted:

(i) Press releases;

(ii) NTSB regulations (Chapter VIII of Title 49, Code of Federal Regulations);

(iii) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions;

(iv) Safety recommendations; and

(v) NTSB Annual Reports.

(2) The NTSB public Website, *http://www.ntsb.gov,* also includes an email subscription service for press releases, safety recommendations, and other announcements.

§ 801.61 Appeals of fee determinations.

Requesters seeking an appeal of the FOIA Office's fee or fee waiver determination must send a written appeal to the Managing Director within 90 calendar days. The Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional days (excluding Saturdays, Sundays, and legal public holidays), in accordance with § 801.23.

Robert L. Sumwalt III,

Chairman.

[FR Doc. 2017–26316 Filed 12–11–17; 8:45 am]

BILLING CODE 7533–01–P

Proposed Rules

Federal Register

Vol. 82, No. 237

Tuesday, December 12, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1163; Product Identifier 2017–CE–041–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Models G–IV and GIV–X airplanes. This proposed AD was prompted by the potential for fatigue cracks developing in the main landing gear actuator attachment fitting that had a certain repair incorporated. This proposed AD would require incorporating new revisions into the Instructions for Continued Airworthiness of the Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual) that establish an inspection cycle for the repaired MLG side brace actuator fittings. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 26, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206; telephone: (800) 810–4853; fax 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1163; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5547; fax: (404) 474–5605; email: *william.o.herderich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1163; Product Identifier 2017–CE–041–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

We were notified that fatigue cracking in the main landing gear (MLG) actuator attachment fitting could occur on certain Gulfstream Aerospace Corporation (Gulfstream) Models G–IV and GIV–X airplanes that are Maintenance Steering Group ''MSG–3'' compliant and have had repair SE05732102 incorporated.

It has been determined that incorrect fracture toughness was used in calculating repetitive inspection intervals based on damage tolerances. Repair SE05732102 for the MLG side brace fitting was issued without Instructions for Continued Airworthiness (ICA). Gulfstream has developed new ICA to address this issue.

This condition, if not corrected, could result in failure of the MLG actuator attachment, which could compromise the lateral support of the MLG during ground maneuvers, possibly leading to collapse of the affected MLG with consequent loss of control. In addition, this condition could also cause the MLG side brace to fail, which could result in penetration of the wing fuel tank and cause an uncontained fire.

Related Service Information Under 1 CFR Part 51

We reviewed Gulfstream G350 Customer Bulletin Number 192A, dated June 15, 2017, including Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016; Gulfstream G450 Customer Bulletin 192A, dated June 15, 2017, including Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016; Gulfstream IV Customer Bulletin Number 238A, dated June 15, 2017, including Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016; Gulfstream G300 Customer Bulletin Number 238A, dated June 15, 2017, including Appendix A, Gulfstream Document GIV–SGER–553,

Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016; and Gulfstream G400 Customer Bulletin Number 238A, dated June 15, 2017, including Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016. In combination, the service information describes procedures for inspecting maintenance records to determine if repair SE05732102 for the main landing gear side brace fitting has been incorporated and determining initial and repetitive inspection requirements for the main landing gear side brace fitting. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 709 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect Maintenance Records	1 work-hour × $85 per hour = $85.	Not applicable	$85	$60,265
Incorporate new revisions into the Instructions for Continued Airworthiness of the Limitations section of the FAA-approved maintenance program (e.g., maintenance manual).	1 work-hour × $85 per hour = $85.	Not applicable	85	60,265

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes and domestic business jet transport airplanes to the Director of the Policy and Innovation Division.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Gulfstream Aerospace Corporation: Docket No. FAA–2017–1163; Product Identifier 2017–CE–041–AD.

(a) Comments Due Date

We must receive comments by January 26, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Gulfstream Aerospace Corporation model airplanes that are certificated in any category:

(1) Model G–IV, serial numbers (S/Ns) 1000 through 1399 having Aircraft Service Change (ASC) 416A (MSG–3) incorporated; and S/Ns 1400 through 1535; and

(2) Model GIV–X, S/Ns 4001 through 4355.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by the potential for fatigue cracks in the main landing gear (MLG) actuator attachment fitting that had a certain repair incorporated. We are issuing this AD to prevent failure of the MLG actuator attachment. The unsafe condition, if not

corrected, could compromise the lateral support of the MLG during ground maneuvers, possibly leading to collapse of the affected MLG with consequent loss of control. In addition, this condition could also cause the MLG side brace to fail, which could result in a penetration of the wing fuel tank causing an uncontained fire.

(f) Compliance

Within the next 100 hours time-in-service after the effective date of this AD, comply with the actions in paragraphs (g) through (i) of this AD, unless already done.

(g) Inspect Maintenance Records

Inspect the airplane maintenance records to determine if repair SE05732102 for the MLG side brace fitting has been incorporated. To do this inspection, use the Accomplishment Instructions in Gulfstream G350 Customer Bulletin Number 192A; Gulfstream G450 Customer Bulletin 192A; Gulfstream IV Customer Bulletin Number 238A; Gulfstream G300 Customer Bulletin Number 238A; and Gulfstream G400 Customer Bulletin Number 238A; all dated June 15, 2017, as applicable. The service information referenced in this paragraph specifies sending a service reply card back to Gulfstream Aerospace Corporation if repair SE05732102 for the MLG side brace fitting has been not been incorporated. This action is not required in this AD.

(h) Determine Initial and Repetitive Inspection Requirements

If it is determined during the maintenance records inspection required in paragraph (g) of this AD that repair SE05732102 for the MLG side brace fitting has been incorporated, determine the initial and repetitive inspection requirements using the Accomplishment Instructions of the service information identified in paragraph (g) of this AD along with the following documents, as applicable. Comply with the inspection requirements as determined.

(1) Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016, to Gulfstream G350 Customer Bulletin No. 192A, dated June 15, 2017;

(2) Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016, to Gulfstream G450 Customer Bulletin No. 192A, dated June 15, 2017;

(3) Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016, to Gulfstream IV Customer Bulletin No. 283A, dated June 15, 2017;

(4) Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016, to Gulfstream G300 Customer Bulletin No. 283A, dated June 15, 2017; and

(5) Appendix A, Gulfstream Document GIV–SGER–553, Revision A, Instructions for Continued Airworthiness for Gulfstream Repair Drawing SE05732102, dated December 14, 2016, to Gulfstream G400 Customer Bulletin No. 283A, dated June 15, 2017.

(i) Revise Limitations Section

Insert the documents listed in paragraphs (h)(1) through (5) of this AD into the Instructions for Continued Airworthiness of the Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual), as applicable. The revised limitations sections establish inspections of the repaired MLG side brace actuator fittings.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (g) through (i) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact William O. Herderich, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5547; fax: (404) 474–5605; email: *william.o.herderich@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206; telephone: (800) 810–4853; fax 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on December 5, 2017.

Pat Mullen,

Acting Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–26617 Filed 12–11–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2017–0627; FRL–9971–67–OAR]

Periodic Reviews of the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of availability.

SUMMARY: The Environmental Protection Agency (EPA) is required to conduct periodic reviews of certain aspects of the Renewable Fuel Standard (RFS) program under the Clean Air Act. This Notification of Availability (NOA) announces the availability of a document titled ''Periodic Reviews for the Renewable Fuel Standard Program.'' The document describes EPA's interpretation of the statutory requirement to conduct periodic reviews, and prior actions that EPA has taken to fulfill its obligations to conduct such reviews.

DATES: December 12, 2017.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

A. Docket

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0627. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

B. Electronic Access

You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

II. Overview

Under section 211(o)(11) of the Clean Air Act, EPA is required to conduct certain periodic reviews. A separate document entitled, ''Periodic Reviews for the Renewable Fuel Standard Program'' explains our interpretation of the statutory text, including both ambiguities and unintelligible aspects of subparagraph (C) of CAA section 211(o)(11). That document also describes our fulfillment of the obligation to conduct periodic reviews notwithstanding the interpretive issues, and the contexts in which we have used the results of those periodic reviews. That document, and other supporting documents, are available in the docket.

Dated: November 30, 2017.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2017–26422 Filed 12–11–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17–290, 17–105; FCC 17–157]

FCC Form 325 Data Collection; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on whether to eliminate Form 325, Annual Report of Cable Television Systems, or, in the alternative, on ways to modernize and streamline the form.

DATES: Comments are due on or before February 12, 2018; reply comments are due on or before February 26, 2018.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 17–290, 17–105, by any of the following methods:

- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Maria Mullarkey of the Policy Division, Media Bureau at *Maria.Mullarkey@fcc.gov,* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17–157, adopted and released on November 16, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-157A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. This Notice of Proposed Rulemaking (NPRM) seeks comment on whether to eliminate Form 325, Annual Report of Cable Television Systems, or, in the alternative, on ways to modernize and streamline the form. Form 325 collects operational information from cable television systems nationwide, including their network structure, system-wide capacity, programming, and number of subscribers. There have been significant changes in the multichannel video programming distributor (MVPD) marketplace and in the way cable systems operate since the Commission last examined the requirement to file Form 325 almost two decades ago. Given these transformations in the industry, and the commercial availability of cable operator-related data, we think it is appropriate to take a fresh look at the form and to evaluate the continued need for the Form 325 information collection. We also note that, as part of the record in the Commission's Modernization of Media Regulation Initiative proceeding, some industry commenters request that the Commission reevaluate the requirement for cable systems to file Form 325 and consider whether the form should be eliminated to reduce burdens on the cable industry.[1] We seek comment on whether the costs of the Form 325 data collection now exceed the benefits of the information and on whether there may be less burdensome ways for the Commission to obtain this data or on whether the form should be modified to reflect technological and other pertinent industry changes.

I. Background

2. Form 325 collects operational information from cable television systems nationwide, including data about subscriber numbers, equipment, plant information, frequency and signal distribution information, and programming.[2] The form must be filed annually by all cable systems with 20,000 or more subscribers, which accounts for the vast majority of cable subscribers, and a random sampling of small cable systems with fewer than 20,000 subscribers.[3] Each year in December, the Commission sends a notification to each operator that must file Form 325 and instructs the operator to file the form electronically via the Cable Operations and Licensing System (COALS) within 60 days from the date of the letter.[4] Form 325 filers report data from the last week in December of the preceding year. Cable systems have filed the current version of Form 325 since 2003, with minor updates made in 2008.[5] Filers have been required to file

[1] *See* Comments of the American Cable Association, MB Docket No. 17–105, at 26–27 (ACA Comments); Comments of NCTA—The Internet and Television Association, MB Docket No. 17–105, at 29–30 (NCTA Comments); Comments of Verizon, MB Docket No. 17–105, at 17–18 (Verizon Comments).

[2] *See* 47 CFR 76.403. The FCC Form 325 is available via the Commission's website at *http://www.fcc.gov/forms* or *https://fcc.gov/coals/.*

[3] 47 CFR 76.403.

[4] *See id.* In recent years, this notification letter has been emailed to cable systems. Follow up notifications to operators that fail to file on time are sent via certified mail.

[5] *See* FCC, Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested, Notice, 73 FR 50814 (Aug. 28, 2008) (describing refinements made to Form 325).

the form electronically via COALS since 2005.[6]

3. The Commission first developed the form for use in 1966[7] and subsequently adopted it as an annual filing requirement in 1971.[8] The Commission explained in 1971 that the form was ''necessary to enable the Commission to keep abreast of [cable TV system] developments, fulfill its regulatory responsibilities in this field, and assist Congress in its consideration of related legislative proposals.''[9] At that time, the Commission required that all cable systems file the form, declining to exclude small systems from this requirement because the Commission concluded that it needed comprehensive data to properly evaluate such systems.[10]

4. The Commission's last significant modification of the Form 325 data collection was in 1999.[11] At that time, the Commission revised and streamlined the form, and significantly reduced the number of cable systems required to file Form 325 annually by devising a sampling methodology to gather information from systems with fewer than 20,000 subscribers rather than requiring all such systems to file each year.[12] The Commission sought ''to strike a balance to reduce the burdens placed upon the industry and on Commission resources in the Form 325 information collection process while still retaining access to core information that is needed by the Commission in order to perform its regulatory functions.''[13] It noted that the processing and compilation of Form 325 data was ''a labor intensive process for the Commission.''[14] The Commission concluded that the information collected based on the sampling of subscribers would ''provide the Commission with an adequate profile of how cable systems operate today and how they impact the general population.''[15] At that time, the Commission also considered whether to eliminate this data collection process entirely, assessing the utility of the form for purposes of the agency's policymaking and enforcement activities.[16] The Commission was not persuaded to eliminate the form, and it found that ''there is sufficient value in the information collected . . . that the information collection process should not be altogether eliminated.''[17]

5. Today, industry commenters argue that Form 325 is burdensome for cable systems and has outlived its usefulness, given the availability of information about the cable industry from alternative sources and the changes in the MVPD marketplace. In the 2017 Modernization of Media Regulation Initiative proceeding, NCTA—The Internet and Television Association (NCTA), the American Cable Association (ACA), Verizon, and ITTA—The Voice of America's Broadband Providers (ITTA) each assert that the Commission should eliminate the Form 325 requirement. NCTA argues that the routine collection of information does not make sense in today's competitive video marketplace, particularly where there is no similar requirement applicable to non-cable MVPDs or online video distributors.[18] NCTA argues further that the Form 325 filing ''is not statutorily required and does not serve any clear or legitimate purpose.''[19] ACA contends that Form 325 collects information that is publicly available or provided to the Commission in other required filings, such as signal distribution and frequency information, as well as information that has little utility today, such as set-top box and

[6] FCC, Public Notice, *Media Bureau Implements Mandatory Electronic Filing of FCC Forms 320, 322, 324, and 325 Via COALS,* 19 FCC Rcd 13053 (MB 2004).

[7] *Amendment of Subpart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems; Amendment of Subpart I, Part 21, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Domestic Public Point-To-Point Microwave Radio Service for Microwave Stations Used to Relay Television Broadcast Signals to Community Antenna Television Systems; Amendment of Parts 21, 74, and 91 to Adopt Rules and Regulations Relating to the Distribution of Television Broadcast Signals By Community Antenna Television Systems, and Related Matters,* Second Report and Order, 2 FCC 2d 725, para. 99 (1966). The 1966 Form 325 requested ownership information, number of subscribers, broadcast signal carriage, program origination data, certain financial data, and a map of the system.

[8] *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals,* Third Report and Order, 32 FCC 2d 13, para. 5 (1971).

[9] *Id.* para. 2.

[10] *Id.* para. 5 (finding that ''excusing small systems from filing certain data would deprive the Commission of the very information which it lacks''). In 1972, the Commission adopted rules governing the Cable Television Service, which included the annual Form 325 reporting requirement. *See Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals; Amendment of Section 74.1107 of the Commission's Rules and Regulations to Avoid Filing of Repetitious Requests; Amendment of Section 74.1031(c) and 74.1105(a) and (b) of the Commission's Rules and Regulations As They Relate to Addition of New Television Signals; Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Federal–State or Local Relationships in the Community Antenna Television System Field; and/or Formulation of Legislative Proposals in this Respect; Amendment of Subpart K of Part 74 of the Commission's Rules and Regulations With Respect to Technical Standards for Community Antenna Television Systems,* Report and Order, 36 FCC 2d 143 (1972) (adopting 47 CFR 76.401). Before 1976, cable operators were required to file the form on a fixed date (on or before March 1). 47 CFR 76.401. In 1976, the Commission changed the process to facilitate data automation, sending cable operators a pre-filled form that cable operators corrected and returned to the Commission within 60 days. *See Amendment of Part 76 of the Commission's Rules and Regulations to Alter Cable Television Reporting Requirements,* Order, 61 FCC 2d 1014 (1976). At this time, the Commission also moved the Form 325 reporting requirement to its current location at Section 76.403 of the rules. *See id.* (adopting 47 CFR 76.403). This process remained in place until 2005, when operators were required to file the form electronically via COALS.

[11] *1998 Biennial Regulatory Review—''Annual Report of Cable Television Systems,'' Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules,* Report and Order, 14 FCC Rcd 4720 (1999) (*1999 Form 325 Order*).

[12] *Id.* para. 12.

[13] *Id.* para. 11. *But see id.* (Statements of Commissioners Furchtgott-Roth and Powell dissenting from the Commission's decision not to eliminate Form 325).

[14] *Id.* para. 4.

[15] *Id.* para. 12.

[16] *1998 Biennial Regulatory Review—''Annual Report of Cable Television Systems,'' Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules,* Notice of Proposed Rulemaking, 13 FCC Rcd 12266, para. 6 (1998). Specifically, the Commission sought comment ''on whether it continues to be important for the Commission to have access to the type of data reported on the current Form 325 and the extent to which this information is available from other sources.'' *Id.* In response, two commenters argued in favor of keeping the form—the Institute for Public Representation, which argued that the information in the form is critical to the Commission's assessment of cable operator compliance with horizontal integration, must carry, and leased access rules, and the National Association of Broadcasters, which argued that the information would be needed for purposes of the Commission's digital television must carry rulemaking proceeding. *1999 Form 325 Order,* paras. 9–10. Other industry commenters argued that the form serves no identifiable regulatory or policy purpose, is burdensome to the cable industry, and contains information that can be obtained from alternative sources, including data published by commercial resources or available through other government filings. *Id.* paras. 5–8.

[17] *1999 Form 325 Order, 14 FCC Rcd at 4725, 4727, paras. 11, 14–15. See also 1998 Biennial Regulatory Review—''Annual Report of Cable Television Systems,'' Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules,* Order on Reconsideration, 15 FCC Rcd 9707 (2000). With respect to the argument that certain information on Form 325 is available from other sources, the Commission observed that there are no assurances such information is current or collected consistently by commercial entities, and it noted that having current and accurate information available to the Commission is ''of considerable importance.'' *1999 Form 325 Order,* paras. 14–15.

[18] NCTA Comments at 30. *See also* ACA Comments at 27 (noting that the Commission does not request similar data from DBS providers or competitive video entrants that are not registered in the COALS database).

[19] NCTA Comments at 30.

cable plant details.[20] According to ACA, the form is no longer necessary and should be eliminated.[21] Likewise, Verizon argues that the Commission should eliminate Form 325 and its associated data collection, opining that the information collected on the form does not fit competitive video services such as Verizon, is not reflective of today's competitive video marketplace, and can be obtained from other sources.[22] In reply comments, ITTA agrees with the arguments set forth by NCTA, ACA, and Verizon in favor of eliminating Form 325.[23] No commenters argued in favor of retaining the form.

II. Discussion

A. Utility of Form 325 Reporting Requirement

6. We seek comment on the continued utility of collecting Form 325 data and whether the Commission should eliminate the form entirely. Given the substantial changes in the MVPD marketplace and in the operations of cable systems since the Commission last considered the utility and effectiveness of the Form 325 data collection almost two decades ago, including the transition to digital television and the development of new technologies and ways to deliver video programming to consumers, we believe it is appropriate to consider whether the form continues to be useful to the agency's regulatory and adjudicatory functions with respect to the cable industry and whether the information collected therein is available from alternative sources. We also seek comment on the costs of this requirement for cable systems and on whether the benefits of the information outweigh the costs.

7. We seek comment on whether changes in the MVPD marketplace or other factors since the Commission last considered the utility and effectiveness of the Form 325 data collection almost two decades ago should lead the Commission to a different conclusion regarding the need for the Commission to collect the data required by the form. To what extent do the changes in the industry and regulatory environment since 1999 obviate or reduce the need for this information? For example, in the *1999 Form 325 Order,* the Commission noted the utility of the form in providing information about the number of leased access channels being used on cable systems.[24] However, the Commission provides information on the average number of leased access channels in its annual report on cable industry prices.[25] Is it still useful to collect this information on Form 325? We note that the Commission started collecting information from cable systems via Form 325 well before cable operators became significant players in the broadband market. The Commission currently collects information from broadband providers, including cable operators, on FCC Form 477, Local Telephone Competition and Broadband Reporting, and there is some overlap between the Form 325 and Form 477 data collections.[26] Is there a continued need for the Commission to collect Form 325 data to support the Commission's policy initiatives and decision making or to inform reports to Congress, such as the Commission's annual video competition report?[27] Would eliminating Form 325 hinder the Commission's ability to evaluate the state of competition among cable systems? If so, what aspects of the form are essential to this evaluation?

8. We also seek comment on the burden for cable operators to file Form 325 each year and, in particular, on the amount of time and resources it takes to complete the filing for each cable system. Do the benefits and uses of the information collected via Form 325 outweigh the burdens and costs on cable systems to file the form? To the extent the Commission might in the future need discrete information, would it be more cost effective for the Commission to undertake targeted information collections to obtain it?

9. We also seek comment on whether and to what extent Form 325 merely duplicates information that the Commission can obtain from commercial sources. For example, the Commission routinely cites data from SNL Kagan, BIA/Kelsey, The Nielsen Company, and Warren Communications Television and Cable Factbook.[28] What other sources of cable data are available? Does the information collected by other sources duplicate what is collected via Form 325? In recent years the Commission has cited Form 325 data in a few proceedings.[29] To the extent this

[20] ACA Comments at 27. *See also* Reply Comments of the American Cable Association, MB Docket No. 17–105, at 9–10.

[21] ACA Comments at 27.

[22] Verizon Comments at 17–18. *See also* Reply Comments of Verizon, MB Docket No. 17–105, at 6.

[23] Reply Comments of ITTA—The Voice of America's Broadband Providers, MB Docket No. 17–105, at 8–9 (ITTA Reply).

[24] *1999 Form 325 Order,* para. 22.

[25] *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment,* Report on Cable Industry Prices, 31 FCC Rcd 11498, para. 21, table 6 (2016).

[26] For example, Form 325 solicits information on the number of cable modem (*i.e.,* broadband) subscribers and the number of telephony subscribers for each cable system, and Form 477 collects information on the number of broadband and telephony subscribers by census tract. *See* FCC Form 477, Local Telephone Competition and Broadband Reporting, Instructions, Section 5: Completing Each Section of FCC Form 477 (Dec. 5, 2016), *available at https://transition.fcc.gov/form 477/477inst.pdf.*

[27] Form 325 data has been cited in the Commission's annual video competition reports, for example, to show the growth in the number of all-digital cable systems and the percentage of households passed by incumbent cable systems as well as the percentage of households passed that subscribe to these systems. *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Sixteenth Report, 30 FCC Rcd 3253, para. 79, tables 3–4 (2015) (using Form 325 data to show the growth in all-digital cable systems for cable systems with more than 20,000 subscribers and for the sampling of cable systems with between 5,000 and 20,000 subscribers); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fourteenth Report, 27 FCC Rcd 8610, paras. 70, 116, note 350 (2012) (citing Form 325 data to show the percentage of households passed by incumbent cable systems that subscribe to these systems as well as the number of very small cable systems (fewer than 5,000 subscribers) surveyed that offer neither internet access nor television access). In addition, Form 325 data has been cited as a source in the Commission's annual reports on cable industry prices. *See, e.g., Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment,* Report on Cable Industry Prices, 31 FCC Rcd 11498, attach. 1 (2016) (citing Form 325 data for the numbers of cable communities by each sampling group (*i.e.,* noncompetitive group and effective competition group)). The Commission has used Form 325 data to inform other reports to Congress. *See, e.g., In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010,* Report, 26 FCC Rcd 11919, para. 42 (2011) (using Form 325 data to determine the carriage of in-state broadcast stations on cable systems).

[28] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Eighteenth Report, 32 FCC Rcd 568 (2017) (citing data from Nielsen, BIA/Kelsey, and SNL Kagan throughout as support for multiple data points regarding MVPDs, broadcast television stations, and online video distributors); *Cable Television Technical and Operational Standards,* Report and Order, MB Docket No. 12–217, FCC 17–120, at 2, 35, para. 3, app. C, para. 8 & notes 16, 18 (rel. Sept. 25, 2017) (citing data from SNL Kagan on the percentage of cable video customers that subscribe to digital service, and data from Warren Communications Television & Cable Factbook on the number of cable systems by subscriber size).

[29] In a recent channel sharing order, the Commission reviewed data collected from the 2015 Form 325 filing to determine the number of low power television (LPTV) and Class A stations carried on cable systems pursuant to mandatory carriage. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context,* Report and Order, 32 FCC Rcd 2637, para. 12, note 47 (2017). *See also Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Fourth Further Notice of Proposed Rulemaking and Declaratory Order, 27 FCC Rcd 1713, paras. 9–10, 20, notes 32–33, 36, 66–68, app.

Continued

information continues to be useful, can the Commission obtain it from other sources? Is there unique value in having the Commission collect the information contained within Form 325, rather than relying on third-party sources?

10. Are there other external uses of the Form 325 data collection of which the Commission should take account? [30] We note that Warren Communications annually files a Freedom of Information Act (FOIA) request for Form 325 data from the Commission and that other entities and individuals have periodically sought Form 325 data through FOIA requests. The Commission does not provide this information in response to FOIA requests until three years after initial filing due to confidentiality requests that are routinely filed by cable operators. Is any information from alternative sources based on the FCC's Form 325 data?

B. Ways To Improve and Modernize Form 325 Data Collection

11. If the Commission decides to retain the Form 325 data collection, we seek comment on ways to improve and modernize the form. The cable television industry has experienced many changes since Form 325 was last updated, most notably the ongoing transition to digital technology and the introduction of video programming delivered via internet protocol (IPTV). These changes may render some data collected by the form no longer necessary and raise new information needs not met by the current form. If the Commission decides to retain the Form 325 data collection, we seek to minimize the administrative burden on cable television systems and improve the quality and usefulness of Form 325 data to reflect technological and other pertinent industry changes. We also seek to ensure that the data we collect are closely aligned with the uses to which they will be put by the Commission.

12. In addition, to the extent the form is retained, we propose to upgrade the current COALS filing system to minimize the filing burden for cable systems. An upgraded filing system would be able to pre-fill much of the data that does not change from year to year using other filings, such as community registrations, online public inspection files (OPIF), and previous Form 325 submissions. Cable operators will only have to verify the continued accuracy of any pre-filled information, and update those fields only if necessary.

13. Currently, Form 325 is organized into five parts: (1) Operator information; (2) general information; (3) frequency and signal distribution information; (4) channel line-up; and (5) certification.[31] We seek comment below on each section of the form. We also seek comment on whether the Commission should consider any organizational changes to Form 325, such as changes to the categories of information collected. Commenters should specify any elements of the data collection that we should consider for elimination, whether because of redundancy, insufficient usefulness, or availability from other sources, as well as elements of the data collection that are particularly burdensome to filers. We also ask commenters to specify the data elements that should be retained or modified, as well as the rationale for any proposed change. Is there any information contained in Form 325 that would be helpful to consumers? Could some of the information be made publicly available earlier than three years from the date of filing?

1. Operator Information

14. *Identification and Contact Information.* To the extent the form is retained, we tentatively conclude that cable system identification and contact information should remain a part of the Form 325 data collection. We seek comment on this tentative conclusion and on whether we should modify or streamline this section of the form. Currently, Form 325 requires filers to provide the cable operator's legal name and complete mailing address, including zip code. Are there any ways in which the Commission can streamline this section of the form, such as by pre-filling information using a cable system's Physical System Identifier (PSID), which is a six-digit number used by the Commission to identify each cable system.

2. General Information

15. *Subscriber Information.* We seek comment on whether there is a continued need to collect cable subscriber information to the extent the form is retained, and, if not, whether we should eliminate this section of the form. We seek comment on the uses of this data and whether we can obtain it from other sources. We also seek comment on whether there are ways the Commission can update or streamline the reporting of information on cable subscribers, if it decides to retain this section of the form. Part II of Form 325 requires the reporting of subscriber information, including the number of subscribers; number of potential subscribers; whether the system is overbuilt by a competing cable system; number of homes passed that are also passed by a competing cable system; name of incumbent operator(s) where the system is overbuilt by a competing cable system; number of cable modem subscribers; and number of telephony subscribers. Subscriber data is a useful measure of the size and competitiveness of a cable system, and has been used by the Commission to prepare the annual video competition report and to inform our policymaking.[32] For example, the Commission has used subscriber data as the basis for crafting rule exemptions and justifying differing regulatory treatment based on the number of subscribers served.[33] Is subscriber data

B (2012) (using Form 325 data to determine the number of cable subscribers served by all-digital systems, the number of broadcast stations that elect or default to must carry on cable systems, and the number of small cable systems relying on the HD carriage exemption). Further, the Commission has used Form 325 data to evaluate and craft exemptions in rulemaking proceedings implementing accessibility rules pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010. *See Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, para. 117, note 473 (2013) (citing Form 325 data for its estimate of the number of subscribers that would be affected by a longer phase-in period for smaller and mid-sized cable systems and operators in a 2013 order adopting accessible user interfaces requirements); *Closed Captioning of internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 27 FCC Rcd 787, para. 96, note 382 (2012) (using information collected via Form 325 on the number of deployed set-top boxes to conclude that applying IP closed captioning rules only to devices with built-in screens would exclude one of the most common means by which consumers view programming).

[30] We also note that Form 325 filings are made available to the public via COALS three years after initial filing.

[31] Part V of Form 325 requires certification that all statements of fact contained on the form are true, complete, and correct to the best of the certifying official's knowledge, information, and belief, and are made in good faith.

[32] *But see* Verizon Comments at 17 (''[I]nformation on subscriber counts and 'homes passed' by cable systems does not reflect consumer video viewing patterns or the competitive nature of the video distribution market.'').

[33] *See, e.g., Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act,* Report and Order, 26 FCC Rcd 17222, paras. 35–37, 52–54 (2011) (allowing MVPD systems with fewer than 15,000 subscribers and that are not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers to file streamlined financial hardship waivers to delay compliance from CALM Act rules for up to two years and excusing MVPD operators with fewer than 400,000 subscribers from the requirement to perform annual spot checks); *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible*

available from alternative sources, and, if so, is such data as accurate and current as data provided directly to the Commission by cable systems? We tentatively conclude that we should eliminate the collection of modem and telephony subscriber data via Form 325 because similar data is collected via FCC Form 477, Local Telephone Competition and Broadband Reporting, and we seek comment on this tentative conclusion.[34] Should we collect data on the number of analog and digital subscribers so that the Commission can track the progress of each system's transition to all-digital service? Or, is this information available from public sources? We also seek comment on whether we should retain the existing instruction for how bulk rate customers are calculated for the form, if the Commission continues to require reporting of subscriber numbers. Currently, when reporting the number of subscribers on Form 325, operators must include an estimate of the number of subscribers who pay a bulk rate for service through an intermediary, such as apartment management. On the existing form, the instructions explain that the number of bulk rate customers should be calculated as follows: ''[b]ulk-rate customers = total annual bulk-rate charge divided by basic annual subscription rate for individual households.'' [35] Is there any reason to change this approach? Commenters advocating a different approach should explain their proposed methodology and why it would be an improvement over the one currently in place.

16. *Equipment Information.* We seek comment on whether there is a continued need to collect equipment information via Form 325 to the extent the form is retained, and, if not, whether we should eliminate this section of the form. We seek comment on the uses of this data and whether we can obtain it from other sources. We also seek comment on whether there are ways the Commission can modernize this portion of Form 325 to better reflect devices used by consumers to view cable programming, if it decides to retain this section. Part II of Form 325 collects the following equipment information: the total number of leased cable modems deployed throughout the system and the total number of leased set-top boxes deployed in the system, including a breakdown of this total into the number of analog, hybrid, and digital set-top boxes leased. Is this information relevant to the Commission's duties under Section 629 of the Communications Act of 1934, as amended? [36] Should we modify the equipment section of Form 325 to better achieve our duties under Section 629, and, if so, how? Or, is this information available from public sources? What information will best allow the Commission to determine whether the market for equipment used to access multichannel video programming is fully competitive, pursuant to Section 629? How can we best measure the level of competition as contemplated by Section 629? [37]

17. *Plant Information.* We seek comment on whether there is a continued need to collect plant information via Form 325 to the extent the form is retained, and, if not, whether we should eliminate this section of the form. We seek comment on the uses of this data and whether we can obtain it from other sources. We also seek comment on how the Commission can modernize this portion of Form 325 to better reflect system capacity, if it decides to retain this section. Part II of Form 325 collects information on the cable plant, including the type of delivery system used (*e.g.,* xDSL, fiber to the home, Hybrid Fiber-Coaxial (HFC) network, or other); the length of optical fiber used in the plant; the number of fiber optic nodes, including the average number of subscribers served from these nodes; whether the cable system is part of a cluster, and, if so, the number of systems included in the cluster and total number of subscribers served by the cluster; and whether the facility uses Cable Television Relay Service (CARS) links, as well as a list of all call signs used by the system. Is this information still relevant to the Commission's regulation of cable television? Collecting information about system technology and capacity may enable us to better understand the ability of a system to comply with various regulations, based on their sophistication, capacity, and other technological limitations. Given that, in a digital world, the technical specifications of the cable plant no longer directly correlate to the systems' capacity for delivering programming, these questions may not provide meaningful information about an ever-growing percentage of systems. As cable systems have converted to digital technology, data on the number of programming streams, as well as on the compression and modulation used, may be more valuable than previous metrics used for measuring capacity of analog systems. We seek comment on this analysis. Is such data available from other sources? In conjunction with Section III.B.3 below (frequency and signal distribution information), we seek comment on how the Commission can update its questions on system technology and capacity should it retain the form.

3. Frequency and Signal Distribution Information

18. We seek comment on whether there is a continued need to collect information on frequency and signal distribution to the extent the form is retained, and, if not, whether we should eliminate this section of the form. We seek comment on the uses of this data and whether we can obtain it from other sources. We also seek comment on how the Commission can modernize the questions about a cable system's technical capabilities, capacity, and potential for growth, including its ability to offer sophisticated services, if it decides to retain this section of the

Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, para. 114 (2013) (granting a five-year delayed compliance deadline to MVPD operators with 400,000 or fewer subscribers and to MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers).

[34] *See* Form 477 Resources for Filers, *https://www.fcc.gov/general/form-477-resources-filers.* Links to instructions detailing the data collected on the form and screen-shots of the form are provided at this location. Form 477 collects data semi-annually about broadband connections to end-user locations, wired and wireless local telephone services, and interconnected Voice over internet Protocol (VoIP), and it requires all covered providers to file, regardless of size. *See Modernizing the FCC Form 477 Data Collection,* Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329, para. 2 (2017).

[35] *See* Instructions for FCC Form 325, Annual Report of Cable Television Systems, Section II.2.a (General Information, Subscriber Information, Number of Subscribers).

[36] Section 629(a) directs the Commission to ''adopt regulations to assure the commercial availability . . . of . . . equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems'' from sources other than the multichannel video programming distributor. 47 U.S.C. 549(a). Section 629(e) states that the regulations will sunset ''when the Commission determines that—(1) the market for the multichannel video programming distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.'' *Id.* sec. 549(e).

[37] *See* GAO Report, Video Programming: FCC Should Conduct Additional Analysis to Evaluate Need for Set-Top Box Regulation, at 22–23 (Sept. 2017) (recommending that the FCC, ''as part of its future annual video competition reports, analyze how the ongoing evolution in the video programming market affects competition in the related market for set-top boxes and devices, including how this evolution affects the extent to which consumer choice for devices to access MVPD content remains a relevant aspect of the competitive environment'').

form. Part III of Form 325 requires cable systems to report frequency and signal distribution information, including available upstream spectrum and maximum activated upstream spectrum; available downstream spectrum and maximum activated downstream spectrum; number of channels allocated to analog video programming and the number of channels actually used for analog video programming; number of channels allocated to digital video programming and the number of channels actually used for digital video programming; number of digital streams carried per 6 MHz of bandwidth; and modulation method used. To what extent does this type of data enable the Commission to measure a system's competitiveness and aid our policymaking with respect to the cable industry? Does the ongoing cable transition to digital transmission and other advancements in cable technology, such as IPTV, render many of the current questions on this part of the form ineffective or unnecessary, or does it raise new information needs not met by the current form? Is there a need for the Commission to understand the current capacity of a system, its potential for increases in capacity, and the rate at which new capacity is being delivered into the marketplace over time? If so, how can we gather information on system technology and capacity in a way that will prove flexible and informative as technology continues to evolve? Is such data available from other sources?

4. Channel Line-Up

19. We tentatively conclude that we should eliminate the collection of channel line-up information to the extent the form is retained. We note that information about a cable system's programming is available from online sources, including on cable operator websites and from third-party guide services. Given the availability of this information from other public sources, we tentatively conclude that it is not necessary to continue to collect it from the cable operators via Form 325. We seek comment on this tentative conclusion. If, on the other hand, the Commission ultimately decides that this information collection is necessary and useful, are there ways for the Commission to streamline this section of Form 325 to reduce the burden on cable systems to input their entire channel lineup? For example, should we reduce the types of program channels that must be reported? [38] Currently, Part IV of Form 325 requires cable systems to list the program name,[39] type (*e.g.,* broadcast must carry, broadcast retransmission consent, leased access, public access, government access, education access, local origination, cable network, or other), format (*e.g.,* analog, digital, or digital high definition), and tier (*e.g.,* basic, cable programming services tier/expanded basic tier, premium, pay per view, or other) for each program carried on the system. We seek general comment on the burdens associated with the collection of programming information and any associated benefits.

C. Procedural Changes for Filing Form 325

20. *Applicability of Requirement to Small Cable Systems.* We seek comment on whether the annual Form 325 filing requirement should continue to apply to a random sampling of cable systems that serve fewer than 20,000 subscribers, if the Commission decides to retain the form.[40] Specifically, the Commission samples approximately 50 percent of the systems serving between 5,000 and 20,000 subscribers, but only approximately 4 percent of systems serving fewer than 5,000 subscribers.[41]

21. We seek specific comment on the burden imposed by the Form 325 filing requirement on smaller cable systems. In its media modernization proceeding comments, ACA contends that, should the Commission decide to retain Form 325, it should no longer require cable systems with fewer than 20,000 subscribers to complete the form.[42] According to ACA, ''[r]andomly sampling smaller cable systems increases the burden on those smaller providers selected, as the operators often have no experience filling [out] the form and must often engage outside resources for assistance completing it.'' [43] Which data, if any, is particularly burdensome on smaller systems to provide? Commenters should explain and quantify such burden. If the Commission decides to retain the form, will the burden on small systems to file Form 325 be significantly reduced if the Commission streamlines and modernizes the form as discussed herein? How is the data from smaller cable systems useful to the Commission, and does its usefulness outweigh the burden on such systems?

22. We tentatively conclude that, at a minimum, the Commission should exempt systems that serve fewer than 5,000 subscribers and are not affiliated with a larger operator from filing Form 325, if the form is retained. We seek comment on this tentative conclusion. Given the relative burdens and benefits, should we also exempt other smaller systems from having to complete the form? In addition, for those small cable systems that may still be required to file, should the Commission maintain the current approach of requiring only a sample of these systems to file Form 325 each year? Instead of randomly sampling smaller systems annually, should we require smaller systems to file the report every two, three, or five years, or some other time period? How should we define small systems for such purposes? For example, we could require systems that serve between 5,000 and 20,000 subscribers and are not affiliated with a larger operator (serving more than 2 percent of all MVPD subscribers [44]) to file every three years. We seek comment on these or any other alternative approaches.

23. *Fixed Date for Form 325 Annual Filing.* We seek comment on whether we should set a fixed date on which cable systems must annually file Form 325, if the Commission decides to retain the form. Currently, all systems, even those with 20,000 or more subscribers, wait for the Commission to notify them of their obligation to file Form 325. This notification, in addition to establishing the obligation to file, begins a 60-day clock determining when the operator must file.[45] As a result, operators remain uncertain, from year to year, when they

[38] For example, we could require cable systems to report only those types of channels that relate to certain Commission regulatory requirements, which will allow the Commission to evaluate the effectiveness of these rules and facilitate enforcement. This would include broadcast must carry stations, including local commercial stations, qualified local non-commercial educational (NCE) stations, and qualified LPTV or Class A stations; broadcast retransmission consent stations, including local commercial stations, significantly-viewed stations, distant (out-of-market) stations, and qualified LPTV or Class A stations; leased access; public access; government access; educational access; and local origination. *See, e.g.,* 47 CFR 76.55, 76.56, 76.64, 76.970, 76.971.

[39] The instructions to Form 325 specify that ''program name'' refers to ''[t]he call sign of the TV broadcast station or abbreviation for the pay TV service or non-broadcast (usually satellite delivered) service distributed on the system (*e.g.,* ESPN, CSPAN, HBO).''

[40] *See* 47 CFR 76.403.

[41] Staff analysis of 2016 Form 325 Annual Report of Cable Television Systems. For the 2016 filing year, 544 cable systems with fewer than 20,000 subscribers were selected to file Form 325. Of those, 354 were cable systems with between 5,000 and 20,000 subscribers, and 190 were cable systems with fewer than 5,000 subscribers.

[42] ACA Comments at 27. *See also* ITTA Reply at 9, note 33.

[43] ACA Comments at 27. *See also* NCTA Comments at 30 (''Operators devote many hours to completion of the filing for each PSID every year.'').

[44] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Sixth Report and Order, 30 FCC Rcd 6653, para. 4 (2015).

[45] *See* 47 CFR 76.403.

must file. Should we instead set a fixed date on which filing must occur? We believe this approach could simplify the annual reporting process and add certainty and efficiency to the operator's workflow and that of the Commission, and we seek comment on this analysis. If the Commission were to adopt a fixed due date, which date would be appropriate? Currently, we request that systems report their information as of the last full week in December, and believe retaining that ''as of'' date makes sense for year-to-year consistency. The date should ensure that cable systems have sufficient time to compile and file their information. Given that the Commission previously required Form 325 to be filed on March 1 of each year, would that be an appropriate date?

24. *Confidential Treatment of Form 325.* We seek comment on whether we should adopt any standardized confidentiality procedures for Form 325, if the Commission decides to retain the form, and, if so, what those standards should be. Form 325 filings and the information contained therein generally are not made available to the public until three years after filing due to confidentiality requests that are routinely filed by cable operators, but are made public via COALS thereafter.[46] Before the three-year period, the data is used by the Commission on an anonymized basis. Should the Commission automatically designate certain sections of Form 325 as confidential for all filers, and, if so, which sections? Is there a need to adopt more formal Form 325 confidentiality procedures or are the Commission's current practices sufficient? Should the Commission provide a mechanism for filers to request confidentiality within the Form 325 as it does with regard to Form 477 filers?[47]

Initial Paperwork Reduction Act Analysis

25. The NPRM may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ex Parte Rules

26. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[48] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements

27. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

[46] Cable operators, cognizant of potentially sensitive information disclosed on the form, often request that all or portions of the form not be made routinely available to the public pursuant to Section 0.459 of the Commission's rules. *See, e.g., Request for Confidentiality for Information Submitted on Forms 325 for the Year 2004,* Order, 21 FCC Rcd 2312 (MB 2006) (*Request for Confidentiality*). *See also* 47 CFR 0.459, 0.461. The Media Bureau has recognized that information on Form 325 is commercial in nature and, in the past, has made the determination of whether to keep commercial information confidential on a case-by-case basis by determining whether there is a ''preponderance of the evidence that shows that disclosure of the information will cause the parties substantial competitive harm.'' *Request for Confidentiality,* para. 4.

[47] Filers of FCC Form 477 are instructed that they may submit a request that certain information in the submission not be made routinely available for public inspection by so indicating in the ''Filer Identification Information'' for that submission. *See* FCC Form 477, Local Telephone Competition and Broadband Reporting, Instructions, Section 7.4: Requesting Confidentiality, at 32 (Dec. 5, 2016), *available at https://transition.fcc.gov/form477/477inst.pdf. See also Modernizing the FCC Form 477 Data Program,* Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329, paras. 51–55 (2017) (seeking comment on proposals that certain data collected in the Form 477 that are not commercially sensitive but are currently treated as confidential be made public).

[48] 47 CFR 1.1200 *et seq.*

28. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

29. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Additional Information

30. For additional information on this proceeding, contact Maria Mullarkey of the Policy Division, Media Bureau, at *Maria.Mullarkey@fcc.gov*, or (202) 418–2120.

Initial Regulatory Flexibility Act Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[49] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[50] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[51]

A. Need for, and Objectives of, the Proposed Rules

32. Form 325 collects operational information from cable television systems nationwide, including their network structure, system-wide capacity, programming, and number of subscribers, which is used to inform the Commission's policymaking and enforcement activities on matters related to the cable industry. The NPRM seeks comment on the utility of collecting Form 325 data and whether the Commission should continue to require this annual filing by cable television systems. The NPRM also seeks comment on ways to modernize and streamline Form 325 to minimize the administrative burden on cable systems while ensuring that the most pertinent information about cable television systems is collected, if the Commission decides to retain the Form 325 data collection. Further, the NPRM seeks comment on the impact of the Form 325 filing requirement on smaller cable systems and on whether the annual Form 325 filing requirement should continue to apply to a random sampling of cable systems that serve fewer than 20,000 subscribers.

B. Legal Basis

33. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 548.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

34. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[52] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[53] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[54] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[55] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

35. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, the Commission believes that most cable systems are small.

36. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

37. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business

[49] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

[50] *See* 5 U.S.C. 603(a).

[51] *See id.*

[52] 5 U.S.C. 603(b)(3).

[53] *Id.* sec. 601(6).

[54] *Id.* sec. 601(3) (incorporating by reference the definition of ''small-business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[55] 15 U.S.C. 632.

size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

38. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

39. As indicated above, the NPRM seeks comment on the utility of collecting Form 325 data and on whether the Commission should eliminate the Form 325 data collection entirely. The NPRM also seeks comment on ways to improve and modernize the form, if the Commission decides to retain the Form 325 data collection. With respect to each section of Form 325, the NPRM seeks comment on whether there is a continued need to collect the information solicited therein to the extent the form is retained, and, if not, whether the Commission should eliminate that particular section of the form; on the uses of the data and whether such data can be obtained from other sources; and on how the Commission can update or modernize the questions, if it decides to retain that particular section of the form. In order to evaluate any new or modified reporting, recordkeeping, or other compliance requirements that may result from the actions proposed in this NPRM, the Commission has sought input from the parties on various matters. For example, the NPRM seeks comment on the burden imposed by the Form 325 filing requirement on smaller cable systems; which data, if any, is particularly burdensome on smaller systems to provide; and whether the burden on smaller systems to file Form 325 will be significantly reduced if the form is streamlined and modernized as proposed in the NPRM. The NPRM tentatively concludes that, at a minimum, the Commission should exempt systems that serve fewer than 5,000 subscribers and are not affiliated with a larger operator from filing Form 325, if the form is retained. The NPRM also seeks comment on whether to exempt other smaller systems from having to complete the form or whether to maintain the current approach of requiring a sample of smaller cable systems to file the Form 325 each year. Through this NPRM, the Commission seeks to minimize the administrative burden on cable television systems, including smaller cable systems, improve the quality and usefulness of Form 325 data to reflect technological and other pertinent industry changes, and to ensure that the data collected are closely aligned with the uses to which they will be put by the Commission, if the Commission retains the form. We anticipate that the removal or modification of Form 325 reporting requirements will lead to a long-term reduction in reporting, recordkeeping, or other compliance requirements on all cable systems, including small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' [56]

41. The Commission expects to more fully consider the economic impact on small entities following its review of comments filed in response to the NPRM and this IRFA. Generally, the NPRM seeks comment on the burden for cable operators to file Form 325 each year and on the amount of time and resources it takes to complete the filing for each cable system. The NPRM also asks whether the benefits and uses of the information collected via Form 325 outweigh the burdens and costs on cable systems to file the form. The NPRM also seeks specific comment on the burden imposed by the Form 325 filing requirement on smaller cable systems. The NPRM inquires as to which data is particularly burdensome on smaller systems to provide and on whether the burden on small systems to file Form 325 would be significantly reduced if the Commission streamlines and modernizes the form as discussed in the NPRM, if it decides to retain the form. The NPRM tentatively concludes that, at a minimum, the Commission should exempt systems that serve fewer than 5,000 subscribers and are not affiliated with a larger operator from filing Form 325, if the form is retained. The NPRM asks whether the Commission should exempt other smaller cable systems from having to complete the form or on any alternative approaches to alleviate the filing burden on smaller systems,

[56] 5 U.S.C. 603(c)(1)–(c)(4).

such as requiring smaller systems to file the report every few years instead of randomly sampling smaller systems annually. If the Commission decides to retain Form 325, it seeks comment on ways in which it can streamline the current requirements and thereby reduce the burdens on small cable system filers. The Commission's evaluation of the comments filed on these topics as well as on other questions in the NPRM that seek to reduce the burdens placed on small cable systems will shape the final conclusions it reaches, the final significant alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

42. None.

43. Accordingly, it is ordered that, pursuant to the authority found in sections 4(i), 4(j), 303, and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 548, this Notice of Proposed Rulemaking is adopted.

44. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Cable television operators.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–26678 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 10–119, RM–10762, RM–10844; Report No. 3082]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petition) have been filed in the Commission's rulemaking proceeding by Charles S. Farlow, on behalf of Medtronic, Inc., Chuck Powers on behalf of Motorola Solutions, Inc., and Michael E. Williams, on behalf of Cobra Electronics Corporation.

DATES: Oppositions to the Petition must be filed on or before December 27, 2017. Replies to an opposition must be filed on or before January 8, 2018.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Derenge, email: *Thomas.Derenge@fcc.gov;* phone: (202) 418–2451 or Scot Stone, email: *Scot.Stone@fcc.gov;* phone: (202) 418–0638.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3082, released December 01, 2017. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Personal Radio Services, FCC 17–57, published at 82 FR 41096, August 29, 2017, in WT Docket No. 10–119. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 3.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–26728 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XF852

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement; request for written comments.

SUMMARY: NMFS, in consultation with the North Pacific Fishery Management Council (Council), announces its intent to prepare an Environmental Impact Statement (EIS) on a new halibut bycatch management program for groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI), in accordance with the National Environmental Policy Act of 1969 (NEPA). The proposed action would create a new method of managing halibut bycatch that links halibut prohibited species catch (PSC) limits for the groundfish fisheries to data on halibut abundance. The proposed action is intended to provide a responsive approach for managing halibut bycatch at varying levels of halibut abundance. The new program would minimize halibut bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. The new management program also could provide additional opportunity for the directed halibut fishery at low levels of halibut abundance compared to the status quo and promote conservation of the halibut spawning stock biomass, particularly at low levels of abundance. The EIS will analyze the impacts to the human environment resulting from the proposed bycatch management program. NMFS will accept written comments from the public to identify the issues of concern and assist the Council in determining the appropriate range of management alternatives for the EIS.

DATES: Written comments will be accepted through February 16, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0144, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docket Detail;D=NOAA-NMFS-2017-0144,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record

and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or email *glenn.merrill@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone (EEZ). The management of these marine resources, with the exception of marine mammals and birds, is vested in the Secretary of Commerce. The Council has the responsibility to prepare fishery management plans for the fishery resources that require conservation and management in the EEZ off Alaska. Management of the Federal groundfish fisheries in the BSAI is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP, its amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

The Pacific halibut (*Hippoglossus stenolepis*) resource is fully utilized in Alaska and is a target species in subsistence, personal use, recreational (sport), and commercial fisheries. Halibut have significant social, cultural, and economic importance to fishery participants and fishing communities throughout the geographical range of the resource. Halibut are also incidentally taken as bycatch in groundfish fisheries. The Magnuson-Stevens Act defines bycatch as fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. The term does not include fish released alive under a recreational catch and release fishery management program. 16 U.S.C. 1802 3(2).

The International Pacific Halibut Commission (IPHC) and NMFS manage Pacific halibut fisheries through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773–773k). The IPHC adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations governing the fishery for Pacific halibut developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for 2017 published on March 7, 2017 (82 FR 12730).

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as (1) subsistence halibut fishery management measures, codified at § 300.65; (2) the limited access program for charter vessels in the guided sport fishery, codified at § 300.67; and (3) the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Act.

Background

The Council is examining abundance-based approaches for halibut PSC limits in the BSAI groundfish fisheries. Currently, halibut PSC limits are a fixed amount of halibut mortality in metric tons. When halibut abundance declines, halibut PSC becomes a larger proportion of total halibut removals and can result in lower catch limits for directed halibut fisheries. Both the Council and the IPHC have expressed concern about the impacts of lower catch limits on directed halibut fisheries at low levels of halibut abundance under the status quo. The Council identified abundance-based halibut PSC limits as a potential management approach to address this concern by linking halibut PSC limits to halibut abundance and potentially providing additional opportunity for the directed halibut fisheries compared to the status quo at low levels of halibut abundance.

NMFS and the Council have determined the preparation of an EIS may be required for this action because abundance-based halibut PSC limits may have effects on target and bycatch species and their users that are uncertain or unknown and may result in significant impacts on the human environment not previously analyzed. Thus, NMFS and the Council are initiating scoping for an EIS in the event an EIS is needed.

NMFS and the Council are seeking information from the public through the EIS scoping process on the range of alternatives to be analyzed, and on the environmental, social, and economic issues to be considered in the analysis. Written comments generated during this scoping process will be provided to the Council and incorporated into the EIS for the proposed action.

Halibut Bycatch Management in the BSAI Groundfish Fisheries

The Magnuson-Stevens Act authorizes the Council and NMFS to manage groundfish fisheries in the Alaska EEZ that take halibut as bycatch. The groundfish fisheries cannot be prosecuted without some level of halibut bycatch because groundfish and halibut occur in the same areas at the same times, and no fishing gear or technique has been developed that can avoid all halibut bycatch. However, the Council and NMFS have taken a number of management actions over the past several decades to minimize halibut bycatch in the BSAI groundfish fisheries. Most importantly, the Council has designated Pacific halibut and several other species (herring, salmon and steelhead, king crab, and Tanner crab) as ''prohibited species'' (Section 3.6.1 of the FMP). By regulation, the operator of any vessel fishing for groundfish in the BSAI must minimize the catch of prohibited species (§ 679.21(b)(2)(i)).

Although halibut is taken as bycatch by vessels using all types of gear (trawl, hook-and-line, pot, and jig gear), halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries. NMFS manages halibut bycatch in the BSAI by (1) establishing halibut PSC limits for trawl and non-trawl fisheries; (2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and (3) managing groundfish fisheries to prevent PSC from exceeding the established limits.

Consistent with National Standard 1 and National Standard 9 of the

Magnuson-Stevens Act, the Council and NMFS use halibut PSC limits in the BSAI groundfish fisheries to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. Halibut PSC limits in the groundfish fisheries provide an additional constraint on halibut PSC mortality and promote conservation of the halibut resource. With one limited exception for the Bering Sea midwater pollock fishery described in § 679.21(e)(3)(ii)(C), groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector or season. Therefore, halibut PSC limits must be set to balance the needs of fishermen, fishing communities, and U.S. consumers that depend on both halibut and groundfish resources.

In 2015, the Council revised halibut PSC management in the BSAI groundfish fisheries by recommending Amendment 111 to the FMP. Amendment 111 reduced halibut PSC limits for the BSAI groundfish fisheries by 21 percent. NMFS implemented Amendment 111 on May 27, 2016 (81 FR 24714). In February 2015, in conjunction with review of the analysis prepared for Amendment 111, the Council also requested an initial evaluation of possible approaches to link BSAI halibut PSC limits to data or model-based abundance estimates of halibut. The Council reviewed this initial evaluation at its December 2015 meeting and requested additional information on appropriate indices for use in indexing halibut abundance to PSC limits in the BSAI.

In April 2016, the Council reviewed additional information on abundance-based approaches for halibut PSC limits and unanimously adopted a purpose and need statement to establish abundance-based halibut PSC limits for the BSAI groundfish fisheries. The Council refined the purpose and need statement at subsequent meetings in 2016 and 2017:

> The current fixed yield based halibut PSC caps are inconsistent with management of the directed halibut fisheries and Council management of groundfish fisheries, which are managed based on abundance. When halibut abundance declines, PSC becomes a larger proportion of total halibut removals and thereby further reduces the proportion and amount of halibut available for harvest in directed halibut fisheries. Conversely, if halibut abundance increases, halibut PSC limits could be unnecessarily constraining. The Council is considering linking PSC limits to halibut abundance to provide a responsive management approach at varying levels of halibut abundance. The Council is considering abundance-based PSC limits to control total halibut mortality, provide an opportunity for the directed halibut fishery, and protect the halibut spawning stock biomass, particularly at low levels of abundance. The Council recognizes that abundance-based halibut PSC limits may increase and decrease with changes in halibut abundance.

In October 2016, the Council identified the following objectives for establishing abundance-based halibut PSC limits to guide the development of appropriate management measures and the tradeoffs among them:

1. Halibut PSC limits should be indexed to halibut abundance.
2. Halibut spawning stock biomass should be protected especially at lower levels of abundance.
3. There should be flexibility provided to avoid unnecessarily constraining the groundfish fishery particularly when halibut abundance is high.
4. Provide for directed halibut fishing operations in the Bering Sea.
5. Provide for some stability in PSC limits on an inter-annual basis.

In October 2017, the Council requested a preliminary analysis using specific elements and options it intends to consider in developing alternatives for abundance-based halibut PSC limits. The Council and NMFS also agreed to initiate scoping to prepare an EIS for the proposed action to establish abundance-based halibut PSC limits in the BSAI groundfish fisheries. Additional information on the Council's development of abundance-based halibut PSC limits is available on the Council's website at *http://www.npfmc.org/.*

Proposed Action

The EIS will analyze the proposed action to establish halibut PSC limits for the BSAI groundfish fisheries that can vary with changes in halibut abundance. Abundance-based halibut PSC limits would replace current PSC limits that establish a fixed amount of halibut PSC as the limit for each groundfish sector in the BSAI. The proposed action would apply to participants in Federal groundfish fisheries prosecuted in the BSAI using trawl and non-trawl (fixed) gear. This area is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

Alternative Elements and Options for Abundance-Based Halibut PSC Limits

NMFS, in coordination with the Council, will evaluate a range of alternative methods for establishing abundance-based halibut annual PSC limits for the groundfish fisheries in the BSAI. NMFS and the Council recognize that implementation of abundance-based halibut PSC limits could result in substantial changes to many of the current management measures for halibut PSC in the groundfish fisheries. The EIS will analyze these changes and the likely impacts of those changes on groundfish stocks and participants in the groundfish fisheries. The EIS also will analyze the likely impacts of an abundance-based halibut PSC limits on the halibut stock and on participants in directed halibut fisheries. Alternatives may be formulated based on two elements critical to establishing abundance-based halibut PSC limits: (1) A halibut abundance index, and (2) a control rule informed by abundance index data that results in a halibut PSC limit for the trawl and fixed gear groundfish fisheries in the BSAI. The Council has identified the following index and control rule options for preliminary analysis.

Possible alternatives for the abundance-based halibut PSC management program could be constructed from one or more of the following options, in addition to those developed through the public scoping and Council processes:

1. *Abundance index and application:* Establish halibut abundance indices using the annual NMFS eastern Bering Sea trawl survey and the annual IPHC setline survey. Data from these indices may be applied separately or in combination to establish trawl and fixed gear halibut PSC limits.

2. *Control rule:* Using the selected abundance index, establish a control rule that results in annual halibut PSC limits for the trawl and fixed gear groundfish fisheries in the BSAI. The control rule to establish halibut PSC limits may have one or more of the following features:

- *Control rule application:* The control rule could be applied through a mathematical formula to specify halibut PSC limits based on the abundance index data. The control rule also could be applied through a decision framework that identifies specific ranges of halibut abundance levels and the resulting halibut PSC limits. For example, the control rule could associate low, intermediate and high levels of the spawning biomass with low, intermediate and high PSC limits.
- *Responsiveness of control rule to abundance changes:* The control rule could result in halibut PSC limits that change proportionally with changes in the abundance index or PSC limits that change in different proportions relative to the abundance index to meet specific objectives. For example, a control rule could limit annual variability in halibut PSC limits, as determined by halibut abundance, to achieve the objective of

stability in PSC limits on an inter-annual basis or to provide flexibility to avoid unnecessarily constraining the groundfish fishery, particularly when halibut abundance is high.

• *Starting point for PSC limit:* The control rule will have a PSC limit starting point to which the abundance index will be applied to determine halibut PSC limits for the groundfish fisheries in any given year. The starting point could be based on the current PSC limit or halibut PSC use.

• *Maximum and/or minimum PSC limits:* The control rule could establish a maximum and/or minimum value for the halibut PSC limit for groundfish fisheries. Maximum and/or minimum PSC limits would limit the total amount of halibut PSC that can be taken at varying levels of halibut abundance and could promote the objectives to protect the halibut spawning stock biomass and provide for directed halibut fishing operations in the Bering Sea.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this document, NMFS is notifying the public that an EIS and decision-making process for this proposed action have been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, including potential impacts, and alternatives that should be considered to establish abundance-based halibut PSC limits for the groundfish fisheries in the BSAI. Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record of this proposal and will be available for public inspection. Written comments will be accepted at the address above (see **ADDRESSES**). Please visit the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov* for more information on the EIS to establish abundance-based halibut PSC limits for the BSAI groundfish fisheries and for guidance on submitting effective written public comments.

The public is invited to participate and provide input at Council meetings where the latest scientific information regarding the BSAI groundfish fisheries is reviewed and alternatives for abundance-based halibut PSC limits are developed and evaluated. Notice of future Council meetings will be published in the **Federal Register** and on the internet at *http://www.npfmc.org/*. Please visit this website for information and guidance on participating in Council meetings.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 7, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–26734 Filed 12–11–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 82, No. 237

Tuesday, December 12, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 11, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Salmonella Initiative Program.

OMB Control Number: 0583–0154.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The Salmonella initiative Program (SIP) offers incentives to meat and poultry slaughter establishments to control Salmonella in their operations. SIP benefits public health because it encourages establishments to test for microbial pathogens, which is a key feature of effective process control.

Need and Use of the Information: Under SIP, establishments will share their data with the Food Safety and Inspection Service (FSIS); this will help the Agency in formulating its policy. Establishments that want to enter SIP must send a protocol to FSIS informing the Agency about their plans for implementing SIP in their establishment, including data collection, objectives and methods of evaluating the new technology for which they are receiving the regulator waiver.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 8,256.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–26706 Filed 12–11–17; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; The American Community Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before February 12, 2018.

ADDRESSES: Please direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket number USBC–2017–0005, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin A. Pennington, Rm. 2H465, U.S. Census Bureau, Decennial Census Management Division, Washington, DC 20233 or via email to *Robin.A.Pennington@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Since the founding of the nation, the U.S. Census has mediated between the demands of a growing country for information about its economy and people, and the people's privacy and respondent burden. Beginning with the 1810 Census, Congress added questions to support a range of public concerns and uses, and over the course of a century questions were added about agriculture, industry, and commerce, as well as occupation, ancestry, marital status, disabilities, and other topics. In 1940, the U.S. Census Bureau introduced the long form and, since then, the more detailed questions were only asked of a sample of the public.

The American Community Survey (ACS), launched in 2005, is the current embodiment of the long form of the census and is asked each year of a sample of the U.S. population in order to provide current data needed more often than once every ten years.

The content of the proposed 2019 ACS questionnaire and data collection instruments for both Housing Unit and Group Quarters operations reflects changes to content and instructions that were proposed as a result of the 2016 ACS Content Test. The Census Bureau periodically conducts tests of new and improved survey content to ensure the ACS is meeting the data needs of its stakeholders. The primary objective of content tests is to test whether changes to question wording, response categories, and definitions of underlying constructs improve the quality of data collected.

The ACS is one of the Department of Commerce's most valuable data products, used extensively by businesses, non-governmental organizations (NGOs), local governments, and many federal agencies. In conducting this survey, the Census Bureau's top priority is respecting the time and privacy of the people providing information while preserving the survey's value to the public. The 2019 survey content changes cover several topics:

Telephone Service

The rise of cellphone and smartphone usage, and other complex and varied telephone services and equipment, has changed how people view and use telephones in a household. Research also suggests that some respondents, or in some cases interviewers, may not fully understand the current wording of the survey question on Telephone Service, the additional instructions that accompany the question, or what the question is intending to capture. To make the intent of the Telephone Service question easier to understand by respondents and interviewers, the question was made a stand-alone question and additional instructions are provided on the types of telephones and equipment respondents should include when answering the question. Currently, telephone service is asked as part of a broader question on housing characteristics.

Health Insurance

A question on health insurance premiums and subsidies will be introduced to the ACS immediately following the current question on health insurance coverage. The question on premiums and subsidies asks if a person pays a health insurance premium, and if so, if he or she received a subsidy to help pay the premium. This question will provide more accurate information about coverage categories than available from the existing ACS question on current coverage alone. These data will enhance the ability of HHS and the states to administer Medicaid, CHIP, and the exchanges, and monitor private insurance coverage.

Journey to Work

Changes to the Commute Mode question were motivated by changes in public transportation infrastructure across the United States, particularly the increased prevalence of light rail systems and the need to update and clarify the terminology used to refer to commute modes that appear as categories on the ACS. To improve the Commute Mode question, some of the public transportation modes were modified. The category ''Streetcar or trolley car'' was changed to ''Light rail, street car, or trolley,'' ''Subway or elevated'' was changed to ''Subway or Elevated Rail,'' and ''Railroad'' was changed to ''Long-distance train or commuter rail.'' These three rail-related categories were also slightly reordered so that ''Subway or elevated rail,'' the most prevalent rail mode, is listed first. The phrase ''trolley bus'' was dropped and the phrase ''work at home'' was changed to ''work from home.'' The subheading of instructions was simplified to read ''Mark ONE box for the method of transportation used for most of the distance.'' The Time of Departure question has historically raised concerns about privacy because of the reference to the time a person leaves home. To phrase the question in a less intrusive way, the question was changed to ask what time the person's trip to work began and to remove the word ''home.''

Weeks Worked

The changes to the question on the number of weeks worked were made to allow the Census Bureau to provide high-quality, continuous measures for the number of weeks worked, such as means, medians, and aggregates. In addition, the changes enable additional specificity for weeks worked, particularly with hours worked, income, and occupation. Part A of the question regarding the time period of interest was rephrased from working ''50 or more weeks'' to ''EVERY week'' and additional information is provided in the second sentence. The original instruction of ''Count paid time off as work'' was changed to ''Count paid vacation, paid sick leave, and military service as work.'' For part B of the question, the response option was changed to a write-in response, the reference period (''the PAST 12 MONTHS'') is repeated, and new guidance clarifies what to count as work.

Class of Worker

Changes to the Class of Worker question improve overall question clarity, refine the definition of unpaid family workers, explicitly define a category for Active Duty military, improve question wording and categories, and improve the layout of the question. Response categories were grouped under three general headings. ''Active Duty'' was added as one of the response categories in the government section, and the ''Active Duty'' checkbox was dropped from the Employer Name question. Question and response category wording were revised for clarity. To signal that all six employment characteristics questions refer to the same job (including industry and occupation), the series was renumbered from separate questions to a single series with sub-questions. Lastly, the instructional text and heading for the series immediately preceding the Class of Worker question was simplified.

Industry and Occupation

Ongoing research of the Industry and Occupation question write-in responses has demonstrated that the questions were unclear and confusing to respondents, who were unable to answer at all or answer with sufficient clarity to provide useful data. To increase clarity and improve occupational specificity, these questions were revised to include new and consistent examples, in terms of content and length, and include modified question wording. The number of

characters for write-in responses about ''Job Duties'' was expanded from 60 to 100 characters.

Retirement Income

Over the last 40 years, defined contribution retirement plans have become increasingly common while defined benefit plans (such as pensions) have become less so. Federal surveys have lagged in addressing these newer forms of retirement income and subsequently underreport retirement income. The Retirement, Survivor, and Disability Income question was changed to improve income reporting, increase item response rates, reduce reporting errors, and update questions on retirement income and the income generated from retirement accounts and all other assets in order to better measure retirement income data. The question was expanded to ask about ''*retirement income, pensions, survivor or disability income.*'' In addition, the instructions that accompany the question were expanded to note that income from ''*a previous employer or union, or any regular withdrawals or distributions from IRA, Roth IRA, 401(k), 403(b) or other accounts specifically designed for retirement*'' should be included.

Relationship

For several years, the Census Bureau has been testing revised Relationship questions to improve the estimates of coupled households. The 1990 Census first introduced ''Unmarried Partner'' as a response category to the Relationship to Householder question. The 2000 and 2010 Censuses built upon this work, changing the processing of responses to the Relationship question to more accurately represent same-sex couples. The Census Bureau discovered a statistical error in the 2010 Census data that resulted from opposite-sex couples mismarking their sex. This error has the potential to inflate the estimates of same-sex, married-couple households from the 2010 Census. The Census Bureau released a set of modified state-level, same-sex household estimates from the 2010 Census because of this error, and also began new research efforts to improve the Relationship question.

The Relationship question has been revised to improve measurement of same-sex couples. The existing ''Husband or wife'' and ''Unmarried partner'' response categories were each split into two versions: ''Opposite-sex husband/wife/spouse,'' ''Opposite-sex unmarried partner,'' ''Same-sex husband/wife/spouse,'' and ''Same-sex unmarried partner.'' Additionally, the two unmarried partner categories were moved from near the end of the list of response options to near the beginning, immediately after the ''Husband/wife/spouse'' options. An automated relationship/sex consistency check will be included in electronic instruments to provide respondents an opportunity to change their sex or relationship responses when there is an inconsistency in the reported sex of an individual and whether their relationship was reported as ''Opposite-sex'' or ''Same-sex'' husband/wife/spouse or unmarried partner. This check reduces the inconsistency in responses for a given household and improves the quality of the relationship data. The category ''Roomer or boarder'' has been dropped from the Relationship question.

Race and Hispanic Origin

The 2016 ACS Content Test served as an operational test of the race and ethnicity questions that were previously tested on the 2015 National Content Test (NCT). While recommendations about the race and ethnicity questions adopted for the 2020 Census and production ACS will be based on the results of the census tests and decisions made in consultation with the Office of Management and Budget (OMB), the 2016 ACS Content Test provided an opportunity to test data collection modes and examine other data not available in the 2015 NCT. The 2016 ACS Content Test evaluated interviewer-administered collection modes, assessed the race and ethnicity questions against demographic and socioeconomic data, and separately compared the race and ethnicity results to data from the ancestry question. In 2020 or later, the ACS will adopt the final version of the race and Hispanic origin questions that are implemented for the 2020 Census.

II. Method of Collection

In August 2012, the OMB in conjunction with the Census Bureau established a Subcommittee of the Interagency Council on Statistical Policy (ICSP) to address ACS matters. The ICSP Subcommittee on the ACS exists to advise the Chief Statistician at OMB and the Director of the Census Bureau on how the ACS can best fulfill its role in the portfolio of Federal household surveys and provide the most useful information with the least amount of burden. It may also advise Census Bureau technical staff on issues they request the subcommittee to examine or that otherwise arise in discussions. The ICSP Subcommittee on the ACS reviewed the proposed 2019 ACS content changes and recommended their approval to the OMB and the Census Bureau. For the 2016 ACS Content Test, initial versions of the new and revised questions were proposed by federal agencies participating in the OMB Interagency Committee for the ACS. The initial proposals contained a justification for each change and described any previous testing of the question wording, the expected impact of revisions to the time series and the single-year as well as five-year estimates, and the estimated net impact on respondent burden for the proposed revision. For proposed new questions, the justification also described the need for the new data, whether federal law or regulation required the data for small areas or small population groups, if other data sources were currently available to provide the information (and why any alternate sources were insufficient), how policy needs or emerging data needs would be addressed through the new question, an explanation of why the data were needed with the geographic precision and frequency provided by the ACS, and whether other testing or production surveys had evaluated the use of the proposed questions.

The Census Bureau and the OMB, as well as the ICSP Subcommittee, reviewed these proposals for the ACS. The OMB determined which proposals moved forward into cognitive testing. After OMB approval of the proposals, topical subcommittees were formed from the OMB Interagency Committee on the ACS, which included all interested federal agencies that use the data from the proposed questions. These subcommittees further refined the specific proposed wording in preparation for cognitive testing.

The Census Bureau contracted with Westat, an internationally recognized organization with expertise in statistical research and survey methods, to conduct three rounds of cognitive testing. The results of the first two rounds of cognitive testing informed decisions on specific revisions to the proposed content for the stateside 2016 ACS Content Test. The proposed changes, identified through cognitive testing for each question topic, were reviewed by the Census Bureau, the corresponding topical subcommittee, and the ICSP Subcommittee for the ACS. The OMB then provided final overall approval of the proposed wording for field testing.

The public is invited to comment on all questions on the ACS; however, the Census Bureau is particularly interested in comments on the wording changes to the nine ACS questions listed above, which are proposed to be changed based

on the results of the 2016 ACS Content Test. Concurrently, Federal agencies that are the principal sponsors of these nine questions are invited to respond either directly to the Census Bureau or through this notice.

III. Data

OMB Control Number: 0607–0810.

Form Number(s): ACS–1(2019).

Type of Review: Regular submission.

Affected Public: Federal and legislative agencies, individuals, households, and businesses.

Estimated Time per Response: 40 minutes for the average household questionnaire.

Estimated Total Annual Burden Hours: The Census Bureau plans to contact the following number of respondents each year: 3,540,000 households; 200,000 persons in group quarters; 20,000 contacts in group quarters; 43,000 households for reinterview; and 1,500 group quarters contacts for reinterview. The estimate is an annual average of 2,337,900 burden hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–26726 Filed 12–11–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2016–0024; OMB Control Number 0704–0332]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB, for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 11, 2018.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, DoD Pilot Mentor-Protege Program; OMB Control Number 0704–0332.

Type of Request: Reinstatement with change.

Number of Respondents: 122.

Responses per Respondent: Approximately 2.

Annual Responses: 240.

Average Burden per Response: 1 hour.

Annual Response Burden Hours: 240.

Reporting Frequency: Two times per year for mentor firms; one time per year for protege firms.

Needs and Uses: DoD needs this information to ensure that participants in the Mentor-Protege Program (''the Program'') are fulfilling their obligations under the mentor-protege agreements and that the Government is receiving value for the benefits it provides through the Program. DoD uses the information as source data for reports to Congress required by section 811(d) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). Participation in the Program is voluntary.

Affected Public: Businesses and other for-profit entities and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari. Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Information Collections Program, WHS/ESD Office of Information Management, 4800 Mark Center Drive, 3rd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2017–26715 Filed 12–11–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Elizabeth River and Southern Branch Navigation Improvements Draft General Reevaluation Report/Environmental Assessment

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) in association with the nonfederal sponsor, the Virginia Port Authority, an agent of the Commonwealth of Virginia, announces the availability of the Elizabeth River and Southern Branch Navigation Improvements Draft General Reevaluation Report/Environmental Assessment (GRR/EA) for public review and comment. The purpose of this Draft GRR/EA is to evaluate alternatives that have the potential to improve the current and future operational efficiency of commercial vessels currently using the Norfolk Harbor federal channel in the Elizabeth River. Channel deepening alternatives were evaluated as well as

the No Action/Future without Project Alternative. Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the USACE developed the draft GRR/EA to examine and assess the impacts of the project alternatives and determined that implementation of the Proposed Action would not result in significant impacts.

DATES: The Draft GRR/EA is available for a 30-day review period. Written comments, pursuant to the NEPA, will be accepted until the close of public review at the close of business on January 15, 2018.

ADDRESSES: Written comments or questions from the public may be submitted to the U.S. Army Corps of Engineers, Norfolk District, ATTN: Mr. David Schulte, Planning Branch, Environmental Analysis Section (CENAO–WR–PE), 803 Front Street, Norfolk, VA 23510 or via email to *david.m.schulte@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. David Schulte, 757–201–7007.

SUPPLEMENTARY INFORMATION: The document is available at the following locations: (1) Elizabeth River and Southern Branch Navigation Improvements website: *http://www.nao.usace.army.mil/About/Projects/ElizabethRiverSouthernBranchNav.aspx*, (2) Slover Public Library, 235 East Plume Street, Norfolk, VA 23510. (3) Copies may also be requested in writing at (see **ADDRESSES**).

Proposed Action. The Study Area is located in Hampton Roads, a 25 square-mile natural harbor serving port facilities in the cities of Norfolk, Newport News, Portsmouth, Chesapeake, and Hampton in southeastern Virginia. The study area consists of a of a federally improved channel extending from Lamberts Bend (on the main stem of the Elizabeth River) to the Chesapeake Extension in the southern branch of the Elizabeth River.

The Action Alternative consists of constructing and maintaining the following features:

- Deepening the channel from Lamberts Bend to Perdue Farms (Segment 1a) from a required depth of 40 feet to 45 feet deep in Segment 1a, and deepening the channel from Perdue Farms to the Norfolk Southern Lift Bridge (Segment 1b) from a required depth of 40 feet to 42 feet.
- Deepening the channel from the Norfolk Southern Lift Bridge to the Gilmerton Bridge (Segment 2), from a required depth of 35 feet to 39 feet deep; and
- Continuing to maintain the channel from the Gilmerton Bridge to the Chesapeake Extension to a required depth of 35 feet (Segment 3).

Implementation of the Preferred Alternative would have the potential to impact water quality, benthic resources, cultural resources, floodplains, federally listed threatened and endangered species, marine mammals, and other natural resources. The Proposed Action must be located in a floodplain in order to use the Craney Island Dredged Material Management Area (CIDMMA) as a dredged material placement site. The Proposed Action will adhere to the 8-step process as outlined under Executive Order 11988, Floodplain Management.

Alternatives. The Draft GRR/EA considers a reasonable range deepening alternatives in the project channels to meet the proposed action's purpose and need. It also incorporates measures to avoid and minimize impacts to threatened and endangered species, fish and wildlife species, estuarine and marine habitat, and other resources. In response to problems and opportunities, a range of alternatives was evaluated through an iterative screening and formulation process, resulting in identification of a Preferred Alternative.

Public Involvement. On September 22, 2015, a Notice of Intent to publish an EA was published, along with information on a NEPA public scoping meeting on September 24, 2015. A **Federal Register** Notice was also published to announce the initiation of the feasibility study and also the public NEPA scoping meeting. As part of the public involvement process, all affected federal, Commonwealth of Virginia, and local agencies, private organizations, and the public were invited to the Public Scoping Meeting on September 24, 2015 in Norfolk, Virginia.

This study is authorized under Section 216 of the Flood Control Act of 1970 (Pub. L. 91–611), which authorizes the review of completed projects in the interest of navigation and related purposes to determine the feasibility of further port deepening.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–26724 Filed 12–11–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0083]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the ESEA Title VI Indian Education LEA Grants Program

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 11, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0083. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–34, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Bogart, 202–205–7855.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in

public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the ESEA Title VI Indian Education LEA Grants Program.

OMB Control Number: 1875—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 434.

Total Estimated Number of Annual Burden Hours: 295.

Abstract: This data collection request supports a national evaluation of the Title VI Grants Program that will describe how grantees identify eligible children, and plan and implement program priorities with parent, community and tribal involvement; help AI/AN students meet state standards; align and leverage program funded services with other resources; and assess student outcomes. This information will inform the U.S. Department of Education's Office of Indian Education (OIE), other federal policy, budget and program staff, and grantees about the implementation of current practices. To gather consistent information that addresses questions about how Title VI grantees are identifying eligible children and planning and implementing services for them, it is necessary to collect additional information beyond current federal data collections (*e.g.,* Annual Performance Reports and EASIE Budget Reports provided by the OIE).

Dated: December 7, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–26723 Filed 12–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Service Contract Inventory for Fiscal Year (FY) 2016

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of availability—FY 2016 service contract inventory.

SUMMARY: Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory on its website, at *https://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

FOR FURTHER INFORMATION CONTACT: Camille Manuel, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: 202–245–6658 or by email: *Camille.Manuel@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy in the Office of Management and Budget by December 31, 2016. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public, and (2) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of an agency point of contact.

Through this notice, the Department announces the availability of its inventory on the following website: *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* The point of contact for the inventory is provided under **FOR FURTHER INFORMATION CONTACT**.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117.

Dated: December 6, 2017.

Timothy Soltis,

Acting Chief Financial Officer.

[FR Doc. 2017–26775 Filed 12–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act requires notice of the meeting be announced in the **Federal Register**.

DATES: Tuesday, February 13, 2018, 8:30 a.m.–5:45 p.m.

Wednesday, February 14, 2018, 8:00 a.m.–12:00 p.m.

ADDRESSES: National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Email: *HTAC@nrel.gov* or at the mailing address: Shawna McQueen, Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE–3F, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was

established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849, to provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at): *http://hydrogen.energy.gov/advisory_htac.html*).

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- Updates from Federal/State Governments and Industry
- HTAC Subcommittee Updates
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Monday, February 5, 2018, by email at *HTAC@nrel.gov.* Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place between 8:30 a.m. and 8:45 a.m. on February 13, 2018. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov/advisory_htac.html.*

Issued in Washington, DC, on December 7, 2017.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2017–26747 Filed 12–11–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–10–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed TX-LA Markets Project and Request for Comments on Environmental Issues; Enbridge—Texas Eastern Transmission, L.P.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the TX-LA Markets Project involving construction and operation of facilities by Enbridge—Texas Eastern Transmission, L.P. (Texas Eastern) in Beauregard Parish, Louisiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before January 5, 2018.

If you sent comments on this project to the Commission before the opening of this docket on October 19, 2017, you will need to file those comments in Docket No. CP18–10–000 to ensure they are considered as part of this proceeding. This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–10–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes to modify its existing Gillis Compressor Station in Beauregard Parish, Louisiana. The TX-LA Markets Project would provide about 157,500 dekatherms of natural gas per day to Entergy Louisiana, LLC and Natgasoline LLC.

The TX-LA Markets Project would consist of the following modifications at the existing Gills Compressor Station:

- Installation of two gas cooling bays; and
- installation of two new impellers [1] for existing compressor units.

The general location of the project facilities is shown in appendix 1.[2]

[1] An impeller is a rotor used to increase gas pressure.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–

Land Requirements for Construction

Construction of the proposed facilities would disturb about 39 acres of land for the aboveground facilities. All areas affected are owned by Texas Eastern. Texas Eastern would not require any additional acres for permanent operation of the project's facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's website. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP18–10). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's

8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26744 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–394–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–12–06_Attachment P Grandfathered Agreements Clean-up Filing to be effective 2/5/2018.
Filed Date: 12/6/17.
Accession Number: 20171206–5084.
Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: ER18–395–000.
Applicants: American Falls Solar, LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and MBR Tariff Amendments to be effective 2/5/2018.
Filed Date: 12/6/17.
Accession Number: 20171206–5095.
Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: ER18–396–000.
Applicants: American Falls Solar II, LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and MBR Tariff Amendments to be effective 2/5/2018.
Filed Date: 12/6/17.
Accession Number: 20171206–5096.
Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: ER18–397–000.
Applicants: SunE Beacon Site 2 LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and MBR Tariff Amendments to be effective 2/5/2018.
Filed Date: 12/6/17.
Accession Number: 20171206–5097.
Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: ER18–398–000.
Applicants: SunE Beacon Site 5 LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and MBR Tariff Amendments to be effective 2/5/2018.
Filed Date: 12/6/17.
Accession Number: 20171206–5098.
Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: ER18–399–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 3322, Queue No. X2–011 to be effective 5/1/2012.
Filed Date: 12/6/17.
Accession Number: 20171206–5110.
Comments Due: 5 p.m. ET 12/27/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26742 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–391–000.
Applicants: EnPowered.
Description: Baseline eTariff Filing: Market Based Rate Tariff to be effective 12/7/2017.
Filed Date: 12/5/17.
Accession Number: 20171205–5121.
Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: ER18–392–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: WAPA Work Performance Agreement for Cottonwood Airport 230 kV (RS 228) to be effective 12/6/2017.
Filed Date: 12/5/17.
Accession Number: 20171205–5128.
Comments Due: 5 p.m. ET 12/26/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–13–000.
Applicants: International Transmission Company.
Description: Application under Section 204 of the Federal Power Act of International Transmission Company for authorization to issue debt securities.
Filed Date: 12/5/17.
Accession Number: 20171205–5143.
Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: ES18–14–000.
Applicants: Westar Energy, Inc.
Description: Application under Section 204 of the Federal Power Act of Westar Energy, Inc.
Filed Date: 12/5/17.
Accession Number: 20171205–5144.
Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: ES18–15–000.
Applicants: Kansas Gas and Electric Company.
Description: Application under Section 204 of the Federal Power Act of Kansas Gas and Electric Company.
Filed Date: 12/5/17.
Accession Number: 20171205–5148.
Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: ES18–16–000.
Applicants: Kansas Gas and Electric Company.
Description: Application under Section 204 of the Federal Power Act of Kansas Gas and Electric Company.
Filed Date: 12/5/17.
Accession Number: 20171205–5150.
Comments Due: 5 p.m. ET 12/26/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26741 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10253–000]

Notice of Authorization for Continued Project Operation; Pelzer Hydro Company, LLC, Consolidated Hydro Southeast, LLC

On November 30, 2015 Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC, licensee(s) for the Lower Pelzer Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Lower Pelzer Hydroelectric project facilities are located on the Saluda River in Anderson and Greenville Counties, South Carolina.

The license for Project No. 10253 was issued for a period ending November 30, 2017. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 10253 is issued to the licensee(s) for a period effective December 1, 2017 through November 30, 2018 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2018, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee(s), Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC, are authorized to continue operation of the Lower Pelzer Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26745 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10254–000]

Notice of Authorization for Continued Project Operation; Pelzer Hydro Company, LLC, Consolidated Hydro Southeast, LLC

On November 30, 2015 Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC, licensee(s) for the Upper Pelzer Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Upper Pelzer Hydroelectric project facilities are located on the Saluda River in Anderson and Greenville Counties, South Carolina.

The license for Project No. 10254 was issued for a period ending November 30, 2017. Section 15(a) (1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 10254 is issued to the licensee(s) for a period effective December 1, 2017 through November 30, 2018 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2018, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee(s), Pelzer Hydro Company, LLC and Consolidated Hydro Southeast, LLC, are authorized to continue operation of the Upper Pelzer Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26746 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP16–22–002.

Applicants: NEXUS Gas Transmission, LLC.

Description: Abbreviated Application for an Amendment to the Certificate of Public Convenience and Necessity issued to NEXUS Gas Transmission, LLC.

Filed Date: 12/4/17.

Accession Number: 20171204–5151.

Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: RP17–972–001.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Compliance filing Settlement Compliance Filing in Docket No. RP17–972 to be effective 11/1/2017.
Filed Date: 12/1/17.
Accession Number: 20171201–5312.
Comments Due: 5 p.m. ET 12/13/17.

Docket Numbers: RP18–235–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (CLFP) to be effective 1/4/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5001.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–236–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Contact Information on Title Sheet to be effective 1/5/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5022.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–237–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Contact Information on Tariff's Title sheet to be effective 1/5/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5025.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–238–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Update contact information on Title Page to be effective 1/5/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5026.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–239–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Update Josh Franks Information on Title Page to be effective 1/5/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5027.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–240–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Contact Information on Tariff's Title Sheet to be effective 1/5/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5046.
Comments Due: 5 p.m. ET 12/18/17.

Docket Numbers: RP18–241–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Acquiring Available Capacity Revisions Filing to be effective 2/1/2018.
Filed Date: 12/5/17.
Accession Number: 20171205–5129.
Comments Due: 5 p.m. ET 12/18/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–26743 Filed 12–11–17; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1054]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 12, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–1054.
Title: Application for Renewal of an International Broadcast Station License.
Form No.: FCC Form 422–IB.
Type of Review: Extension of a currently approved information collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 10 respondents; 50 responses.
Estimated Time per Response: 1–8 hours per response.
Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.
Obligation To Respond: Required to obtain or retain benefits. The statutory

authority for this collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 160 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for Renewal of an International Broadcast Station License (FCC Form 422–IB).'' The form has not been implemented yet due to a lack of budget resources and technical staff. After the FCC Form 422–IB has been implemented and the Commission receives final approval from OMB, applicants will complete the FCC Form 422–IB in lieu of the ''Application for Renewal of an International or Experimental Broadcast Station License,'' (FCC Form 311). In the interim, applicants will continue to file the FCC Form 311 with the Commission. (Note: The OMB approved the FCC Form 311 under OMB Control No. 3060–1035).

The Commission stated previously that the FCC Form 422–IB will be available to applicants in the International Bureau Filing System (''IBFS'') after it is implemented. However, the Commission plans to develop a new licensing system within the next five years that will replace IBFS. Therefore, the FCC Form 422–IB will be made available to the public in CLS instead of IBFS.

The information collected pursuant to the rules set forth in 47 CFR part 73, subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26730 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0329, 3060–1116]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 11, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0329.

Title: Section 2.955, Equipment Authorization—Verification (Retention of Records).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 8,000 respondents; 8,000 responses.

Estimated Time per Response: 18 hours (average).

Frequency of Response: One-time and on occasion reporting requirements, recordkeeping requirement; and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 302, 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 302 and 303(r).

Total Annual Burden: 144,000 hours.

Total Annual Cost: $1,600,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Commission rules require equipment testing to determine performance and compliance with FCC standards. This testing is typically done by either the manufacturer's testing laboratory or an independent testing laboratory.

Needs and Uses: This collection will be submitted as an extension after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 2.955 describes for each equipment device subject to verification, the responsible party, as shown in 47 CFR 2.909 shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of § 2.953.

(2) A record of the procedures used for production inspection and testing (if tests were performed) to insure the conformance required by § 2.953. (Statistical production line emission testing is not required.)

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

(4) For equipment subject to the provisions in part 15 of this chapter, the records shall indicate if the equipment was verified pursuant to the transition provisions contained in § 15.37 of this chapter.

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

The Commission needs and requires the information under FCC Rules at 47 CFR parts 15 and 18, that RF equipment manufacturers (respondents) 'self-determine'' their responsibility for adherence to these rules, as guided by the following criteria:

(a) Whether the RF equipment device that is being marketed complies with the applicable Commission Rules; and

(b) If the operation of the equipment is consistent with the initially documented test results, as reported to the Commission.

The information collection is essential to controlling potential interference to radio communications.

(a) Companies that manufacture RF equipment are the anticipated respondents to this information collection.

(b) This respondent ''public'' generally remains the same, although the types of equipment devices that they manufacture may change in response to changing technologies and to new spectrum allocations made by the Commission.

(c) In addition, the Commission may establish new technical operating standards in response to these changing technologies and in allocation spectrum, which these RF equipment manufacturers must meet to receive their equipment authorization from the FCC.

(d) However, the process that RF equipment manufacturers must follow to verify their compliance, as mandated by 47 CFR 2.955 of FCC Rules, will not change despite new technical standards established for specific equipment.

This information collection, therefore, applies to a variety of equipment, which is currently manufactured in the future, and that operates under varying technical standards.

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents and Responses: 63 respondents; 63 responses.

Estimated Time per Response: 190 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(r) and 403.

Total Annual Burden: 11,970 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and

the traffic that flows across the system. For these reasons, the information requested in (b) (Terrestrial Route Map) and (c) (Undersea Location Spreadsheet) above is presumptively exempt from public disclosure under Freedom of Information Act (FOIA) Exemption 3, 5 U.S.C. 552(b)(3), and section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), as implemented in 47 CFR 0.457(c)(1)(i) (exempting disclosure of ''maps showing the exact location of submarine cables''). The information requested in (a) (System Status and Restoration Messages) and (d) (Restoration Capability) described above will be considered exempt under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). If a FOIA request is filed for information submitted in response to this request, the respondent whose records are the subject of the request will be notified of the FOIA request and given the opportunity to oppose release of the records. *See* 47 CFR 0.461(d)(3). We note that the information provided in response to this request will be shared with the Department of Homeland Security's National Communications System (NCS) and relevant Executive Branch agencies on a confidential basis. *See* 44 U.S.C. 3510.

Needs and Uses: This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purposes of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems. This information will provide situational awareness regarding the operational status of submarine cable systems to the Federal government, and allow the Executive Branch to assess potential risks and threats to these critical communications systems in the context of other available information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26681 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0414]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 12, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 25 hours.

Total Annual Cost: $56,250.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. FCC staff uses the data to determine if terrain shielding can provide adequate interference protection and if a waiver of 47 CFR 74.705 and 74.707 of the rules is warranted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26680 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1228]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 11, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1228.

Title: Connect America Fund—High Cost Portal Filing.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents and Responses: 1,599 unique respondents; 3,731 responses.

Estimated Time per Response: 8 hours—60 hours.

Frequency of Response: On occasion, quarterly reporting requirements, annual reporting requirements, one-time reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 68,607 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: We note that USAC must preserve the confidentiality of certain data obtained from respondents; must not use the data except for purposes of administering the universal service programs or other purposes specified by the Commission; and must not disclose data in company-specific form unless directed to do so by the Commission. Respondents may request materials or information submitted to the Commission or the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting approval for this revised information collection. In March 2016, the Commission adopted an order reforming its universal service support program in areas served by rate-of-return carriers. Connect America Fund et al., WC Docket Nos. 10–90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16–33 (*Rate-of-Return Order*). In May 2016, the Commission adopted rules to implement a competitive bidding process for Phase II of the Connect America Fund. Connect America Fund et al., WC Docket Nos. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 16–64 (*Phase II Auction Order*). In August 2016, the Commission adopted a plan tailored to certain carriers, both fixed and mobile, serving Alaska. Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 16–115 (*Alaska Plan Order*). Also, in January 2017 the Commission adopted an order which granted New York State waiver of the Connect America Phase II auction program rules, subject to certain conditions. Connect America Fund et al., WC Docket Nos. 10–90 et al., FCC 17–2 (*New York Auction Order*). The Commission made up to $170.4 million in Connect America Phase II support available to applicants selected in New York's New NY Broadband Program in

accordance with the framework adopted in the order. New York winning bidders that are ultimately authorized to receive Connect America Phase II support will be subject to the same location reporting, build-out milestone certifications, and non-compliance measures as Connect America Phase II auction recipients.

This information collection addresses the requirement that certain carriers with high cost reporting obligations must file information about their locations which meet their broadband deployment public interest obligations via an electronic portal (''portal''). *The Rate-of-Return Order* required that the Universal Service Administrative Company (USAC) establish the portal so that carriers could file their location data with the portal starting in 2017. The *Rate-of-Return Order* required all recipients of Phase II model-based support and rate-of-return carriers to submit geocoded location data and related certifications to the portal. Recipients of Phase II model-based support had been required to file such information in their annual reports due by July 1. The *Phase II Auction Order* requires auction winners to build-out networks capable of meeting their public interest obligations and report, to an online portal, locations to which auction winners had deployed such networks. This information collection also addresses the new portal reporting requirements for carriers receiving Alaska Plan support, including their submission of fiber/microwave middle-mile network maps, and recipients of Phase II support that is awarded in partnership with New York's New NY Broadband Program.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26679 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 11, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Mobility Fund Phase II Challenge Process.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 500 respondents and 500 responses.

Estimated Time per Response: 204 hours for challengers; 71 hours for challenged parties.

Frequency of Response: One-time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

Estimated Total Annual Burden: 78,725 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: To the extent the information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request

confidential treatment pursuant to section 0.459 of the Commission's rules for such information. See 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: A request for approval of this new information collection is being submitted to the Office of Management and Budget (OMB) to obtain the full three-year clearance from OMB. In its November 2011 USF/ICC Transformation Order (FCC 11–161), the Commission established the Mobility Fund, which consists of two phases. Mobility Fund Phase I (MF–I) provided one-time universal service support payments to immediately accelerate deployment of mobile broadband services. MF–II will use a reverse auction to provide ongoing universal service support payments to continue to advance deployment of such services. The Commission adopted the rules and framework for MF–I in the USF/ICC Transformation Order, and sought comment in an accompanying further notice of proposed rulemaking on the proposed framework for MF–II. In its February 2017 Mobility Fund II Report and Order and Further Notice of Proposed Rulemaking (MF–II Report and Order and/or FNPRM) (FCC 17–11), the FCC adopted the rules and framework for moving forward expeditiously with the MF–II auction. Among other things, the Commission stated in the MF–II Report and Order that, prior to the auction, it would establish a map of areas presumptively eligible for MF–II support based on the most recently available FCC Form 477 mobile wireless coverage data, and provide a limited timeframe for parties to challenge those initial determinations during the pre-auction process. The Commission sought comment in the accompanying Mobility Fund II FNPRM on how to best design a robust, targeted MF–II challenge process that efficiently resolves disputes about the areas eligible for MF–II support. In August 2017, the Commission released an Order on Reconsideration and Second Report and Order (Challenge Process Order) (FCC 17–102) in which it (1) reconsidered its earlier decision to use FCC Form 477 data to compile the map of areas presumptively eligible for MF–II support and decided it would instead conduct a new, one-time data collection with specified data parameters tailored to MF–II to determine the areas in which there is deployment of qualified LTE that will be used (together with high-cost disbursement data available from the Universal Service Administrative Company (USAC)) for this purpose, and (2) adopted a streamlined challenge process that will efficiently resolve disputes about areas deemed presumptively ineligible for MF–II support. The map of areas presumptively eligible for MF–II support will serve as the starting point for the challenge process pursuant to which an interested party (challenger) may initiate a challenge with respect to one or more areas initially deemed ineligible for MF–II support (*i.e.,* areas not listed on the Commission's map of areas presumptively eligible for MF–II support and challenged parties can respond to challenges. A challenger seeking to initiate a challenge of one or more areas initially deemed ineligible in the Commission's map of areas presumptively eligible for MF–II support may do so via the online challenge portal developed by USAC for this purpose (the USAC portal). For each state, a challenger must (1) identify the area(s) it seeks to challenge, (2) submit detailed proof of a lack of unsubsidized, qualified 4G LTE coverage in each challenged area in the form of actual outdoor speed test data collected using the standardized parameters specified by the Commission in the Challenge Process Order and any other parameters the Commission or the Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) may implement, and (3) certify its challenge.

After the challenge window closes, the USAC system will use an automated challenge validation process developed by USAC to validate a challenger's evidence and will determine which challenged areas pass validation and which fail. Once all valid challenges have been identified, a challenged party that chooses to respond to any valid challenge(s) will have a response window within which to submit additional data via the online USAC portal. A challenged party may submit technical information that is probative regarding the validity of a challenger's speed tests (*i.e.,* information demonstrating that the challenger's speed tests are invalid or do not accurately reflect network performance), including speed test data and other device-specific data collected from transmitter monitoring software or, alternatively, may submit its own speed test data that conforms to the same standards and requirements specified by the Commission and the Bureaus for challengers.

In conjunction with the qualified 4G LTE data separately collected pursuant to OMB 3060–1242 that will be used to create the map of areas presumptively eligible for MF–II support, the information collected under this new MF–II challenge process collection will enable the Commission to efficiently resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF–II support and establish the final map of areas eligible for such support, thereby furthering the Commission's goal of targeting MF–II support to areas that lack adequate mobile voice and broadband coverage absent subsidies through a transparent process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26731 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0686]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 12, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–0686.

Title: International Section 214 Process and Tariff Requirements—47 CFR sections 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.22, 63.24, 63.25 and 1.1311.

Form No.: International Section 214—New Authorization; International Section 214 Authorization—Transfer of Control/Assignment; International Section 214—Special Temporary Authority and International Section 214—Foreign Carrier Affiliation Notification.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 528 respondents; 792 responses.

Estimated Time per Response: 1–20 hours.

Frequency of Response: On occasion reporting requirement, Quarterly reporting requirement, Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission's statutory authority for this information collection under sections 1, 4(i), 4(j), 10, 11, 201–205, 208, 211, 214, 218, 219, 220, 303(r), 309, 310, 403 and 571 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(j), 160, 161, 201–205, 208, 211, 214, 218, 219, 220, 303(r), 309, 310, 403 and 571.

Total Annual Burden: 3,152 hours.

Annual Cost Burden: $752,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission has not granted assurances of confidentiality to those parties submitting the information, except for the list or routes required under 47 CFR 63.22(h) which the Commission will treat as not routinely available for public inspection. In all the other cases where a respondent believes information requires confidentiality, the respondent can request confidential treatment under Section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a revision of OMB Control No. 3060–0686 titled, ''International Section 214 Authorization Process and Tariff Requirements—47 CFR Sections 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.'' The purpose of this revision is to obtain OMB approval for the reporting requirements under newly adopted 47 CFR 63.22(h), which requires facilities-based international service providers electronically to submit, and maintain, a list of routes on which they have direct termination arrangements with a foreign carrier. In addition, this list maybe used to initiate targeted data collections regarding those routes. Finally, we remove from this collection the requirements related to 47 U.S.C. 310(b) which are now included in the collection under OMB Control No. 3060–1163.

The current title of OMB Control No. 3060–0686 is ''International Section 214 Process and Tariff Requirements—47 CFR Sections 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311''. The Commission would like to change the title to ''International Section 214 Process and Tariff Requirements—47 CFR Sections 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.22, 63.24, 63.25 and 1.1311'' to reflect the addition of 47 CFR 63.22(h) to the information collection.

The information will be used by the Commission staff in carrying out its duties under the Communications Act. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service under section 214 of the Communications Act, 47 U.S.C. 214, including applicants that are, or are affiliated with, foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are also necessary to maintain effective oversight of U.S. international carriers generally.

The frequency of filing applications pursuant to Sections 214 will be determined largely by the applicant seeking to provide U.S international common carrier service under section 214 of the Communications Act, 47 U.S.C. 214. Carriers will also determine largely the frequency of filing under the other rules included in this collection, with the exception of the quarterly reports required of certain carriers under 47 CFR 63.10(c) and the list of routes for which a facilities-based international service provider must make a one-time filing and update as necessary under 47 CFR 63.22(h). If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Telecommunications Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns. Regarding 47 CFR 63.11, carriers determine largely when to notify the Commission of planned investments by or in foreign carriers. If the information is not collected by the Commission, we will not be able to prevent carriers that control bottleneck facilities in foreign countries from using those bottlenecks to discriminate against unaffiliated U.S. carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–26729 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VI will hold its third meeting.

DATES: December 12, 2017.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Suzon Cameron, Deputy Designated Federal Officer, (202) 418–1916 (voice) or *suzon.cameron@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The notice of this meeting was first published in the **Federal Register** on December 5, 2017, only 7 days in advance of the meeting. While the publication did not meet the 15-day requirement for advance publication, exceptional circumstances warrant proceeding with the December 12, 2017 CSRIC meeting. CSRIC members and the public were informed of the December 12 meeting at the October 26, 2017 public meeting of the Council, and CSRIC members have been advised informally of the December meeting date on more than one occasion since then. In addition, the date of the December meeting has been available on the FCC's CSRIC website for at two months. A significant number of Council members have made business and travel plans in accordance with this schedule, and there is no date within one month of the planned date that will accommodate Council members' schedules. Delaying the meeting will cause undue financial burdens on many of the members and any members of the public who have made travel arrangements.

In addition, it is not possible at this time to schedule a half-day meeting in the FCC's Commission Meeting Room for any date within one month of December 12, 2017. As the December 2017 meeting date was announced at the October 2017 public meeting of the Council, the meeting has now been broadly announced to the public more than once.

The December 5, 2017, **Federal Register** notice is available at 82 FR 57444 (December 5, 2017) and *https://www.federalregister.gov/documents/2017/12/05/2017-26159/federal-advisory-committee-act-communications-security-reliability-and-interoperability-council.*

Additional information regarding the CSRIC can be found at: *https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–26732 Filed 12–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Quarterly Savings and Loan Holding Company Report.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Quarterly Savings and Loan Holding Company Report.

Agency form number: FR 2320.

OMB control number: 7100–0345.

Frequency: Quarterly.

Respondents: Savings and loan holding companies (SLHCs) that are currently exempt from filing other Federal Reserve regulatory reports.

Estimated number of respondents: 15.

Estimated average hours per response: 2.5 hours.

Estimated annual burden hours: 150 hours.

General Description of Report: The FR 2320 collects select parent only and consolidated balance sheet and income statement financial data and organizational structure data from SLHCs that are currently exempt from filing other Federal Reserve regulatory reports (exempt SLHCs).[1] The FR 2320 is used by the Board to analyze the overall financial condition of exempt SLHCs to ensure safe and sound operations. These data assist the Board in the evaluation of a diversified holding company and in determining whether an institution is in compliance with applicable laws and regulations.

Legal authorization and confidentiality: The Board has determined that the Home Owners' Loan Act authorizes the Board to require SLHCs to file ''such reports as may be required by the Board'' and instructs that such reports ''shall contain such information concerning the operations of such savings and loan holding

[1] To be exempt, an SLHC must meet one of the following criteria: (1) The SLHC was formed under section 10(c)(9)(C) of the Home Owners' Loan Act (HOLA) and the consolidated assets of its saving association subsidiaries make up less than 5 percent of the total consolidated assets of the SLHC; or (2) its top-tier holding company is an insurance company that only prepares financial statements using statutory accounting principles.

company and its subsidiaries as the Board may require.'' (12 U.S.C. 1467a(b)(2)). The obligation to respond is mandatory for exempt SLHCs. In some cases, lower-tier SLHCs may voluntarily file the FR 2320. In other cases lower-tier SLHCs may be required to file (in addition to the top-tier SLHC) for safety and soundness purposes at the discretion of the appropriate Federal Reserve Bank.

The Board also has determined that data items C572, C573, and C574 (line items 24, 25, and 26) may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA). Commercial or financial information may be protected from disclosure under exemption 4 if disclosure of such information is likely to cause substantial competitive harm to the provider of the information. (5 U.S.C. 552(b)(4)). The data items listed above pertain to new or changed pledges, or capital stock of any subsidiary savings association that secures short-term or long-term debt or other borrowings of the SLHC; changes to any class of securities of the SLHC or any of its subsidiaries that would negatively impact investors; and defaults of the SLHC or any of its subsidiaries during the quarter. Disclosure of this type of information is likely to cause substantial competitive harm to the SLHC providing the information and thus this information may be protected from disclosure under FOIA exemption 4.

With regard to the remaining data items on the FR 2320, the Board has determined that institutions may request confidential treatment for any FR 2320 data item or for all FR 2320 data items, and that confidential treatment will be reviewed on a case-by-case basis.

Current actions: On August 23, 2017, the Federal Reserve published a notice in the **Federal Register** (82 FR 40000) requesting public comment for 60 days on the extension, without revision, of the Quarterly Savings and Loan Holding Company Report. The comment period for this notice expired on October 23, 2017. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 7, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–26710 Filed 12–11–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket Number OP–1573]

Production of Rates Based on Data for Repurchase Agreements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is announcing the production and publication of three rates by the Federal Reserve Bank of New York (FRBNY), in coordination with the U.S. Office of Financial Research (OFR), based on data for overnight repurchase agreement transactions on Treasury securities.

DATES: FRBNY intends to begin publishing the three rates during the second quarter of 2018.

FOR FURTHER INFORMATION CONTACT: David Bowman, Associate Director, (202–452–2334), Division of International Finance; or Christopher W. Clubb, Special Counsel (202–452–3904), Evan Winerman, Counsel (202–872–7578), Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202–263–4869).

SUPPLEMENTARY INFORMATION:

I. Background

On August 30, 2017, the Board published a notice and request for public comment (Request for Information) on the proposal that FRBNY, in coordination with OFR, produce and publish three rates based on overnight repurchase agreement (repo) transactions on U.S. Treasury securities (Treasury repo).[1] The three rates (collectively, the ''Treasury repo rates'') would be based on transaction-level data from various segments of the repo market.

A. Summary of Proposed Rates

Rate 1: Tri-Party General Collateral Rate (TGCR)

The Request for Information indicated that this rate would be a measure of rates on overnight, specific-counterparty tri-party Treasury general collateral (GC) repo. This rate would be calculated based on transaction-level tri-party repo data collected from the Bank of New York Mellon (BNYM) under the Board's supervisory authority. The rate would exclude General Collateral Finance (GCF) Repo® cleared by the Fixed Income Clearing Corporation (FICC) and transactions in which a Federal Reserve Bank is a counterparty.[2]

Rate 2: Broad General Collateral Rate (BGCR)

The Request for Information indicated that this rate would provide a broad measure of rates on overnight Treasury GC repo transactions. The rate would be calculated based on the same transaction-level tri-party repo data collected from BNYM as in the TGCR plus GCF Repo data obtained from DTCC Solutions LLC (DTCC Solutions), an affiliate of the Depository Trust & Clearing Corporation (DTCC).

Rate 3: Secured Overnight Financing Rate (SOFR)

The Request for Information indicated that this rate would provide a broad measure of the general cost of financing Treasury securities overnight. The rate would be calculated based on the tri-party data from BNYM and GCF Repo data from DTCC Solutions used to calculate the BGCR, plus bilateral Treasury repo transactions cleared through FICC's Delivery-versus-Payment (DVP) service, filtered to remove some (but not all) transactions considered ''specials.''[3] This rate would not be a pure GC repo rate, but would offer the broadest measure of dealers' cost of financing Treasury securities overnight.

B. Proposed Calculation of and Publication of the Rates

The Request for Information stated that FRBNY would use a volume-weighted median as the central tendency measure for each of the three Treasury repo rates described above. FRBNY would publish summary statistics to accompany the daily publication of the rate, which would consist of the 1st, 25th, 75th and 99th volume-weighted percentile rates, as well as volumes.

The Request for Information included a target publication time of 8:30 a.m. ET. The Request for Information stated that the rates would be revised only on a same-day basis, and only if the revision would result in a shift in the volume-weighted median by more than one

[1] 82 FR 41259 (Aug. 30, 2017). The Request for Information included a detailed overview of the Treasury repo market.

[2] A Federal Reserve Bank may enter into bilateral and tri-party Treasury repos in order to implement monetary policy. Because all three proposed rates were intended to reflect rates on trades between market participants, it was proposed that all would exclude Federal Reserve repos.

[3] ''Specials'' are repos for specific-issue collateral, which can take place at much lower rates than GC trades because cash providers may be willing to accept a lesser return on their cash, or even at times accept a negative return, in order to secure a particular security. The Request for Information noted that FRBNY could filter out specials by simply excluding the lowest quartile of bilateral transaction volume.

basis point. Such revisions would be effected that same day at or around 2:30 p.m. ET and would result in a republication of updated summary statistics. If relevant data sources were unavailable, the Request for Information stated that the rates would be calculated based upon back-up repo market survey data collected from FRBNY's primary dealer counterparties. In such circumstances, the Request for Information indicated that FRBNY might revise the summary statistics or publish additional summary statistics on a lagged basis.

For each rate, the Request for Information stated that FRBNY would exclude trades between affiliated entities when relevant and when the data to make such exclusions is available. To the extent possible, ''open'' trades for which pricing resets daily (making such transactions economically similar to overnight transactions) would be included in the calculation of the rates.

Finally, the Request for Information stated that each of the rates could be modified in the future in response to market evolution or to incorporate additional market segments if data become available.

II. Public Comments

The Board received twelve comments on the Request for Information from financial institutions and industry associations. Certain commenters focused on possible uses of the proposed rates, including the possibility that the proposed rates (particularly SOFR) could serve as reference rates for financial contracts. Other commenters focused on the calculation, publication, and governance of the proposed rates.

A. Uses of the Proposed Rates

Commenters suggested that the proposed rates would be useful because they would provide a comprehensive view of pricing in the Treasury repo market, would provide a good proxy for a risk-free rate, would provide useful information regarding overnight demand and supply for funding, and could facilitate the creation of futures contracts that would allow market participants to hedge Treasury repos and spot-market Treasury purchases. Most commenters who expressed a view on the potential uses of the proposed rates suggested that SOFR would be more useful than the other rates because SOFR would provide a broader measure of pricing in the Treasury repo market.

Other commenters raised concerns regarding the possible use of SOFR as a replacement for the London Interbank Offered Rate (LIBOR) in financial contracts. For example, a number of commenters believed that U.S. dollar LIBOR should be replaced with term reference rates or rates that reflect bank credit risk in ways that are similar to U.S. dollar LIBOR. Some commenters also noted difficulties in amending certain existing contracts (*e.g.,* syndicated loan and corporate bond contracts) to replace U.S. dollar LIBOR.

Based on public comments, the Board believes that market participants could use the proposed Treasury repo rates in a variety of ways. The Board recognizes that the proposed rates could be used as reference rates in financial contracts, and that the Alternative Reference Rates Committee (ARRC) has selected SOFR as its recommended alternative to U.S. Dollar LIBOR.[4] The Board notes, however, that the proposal to publish these rates was not contingent upon the ARRC's selection of SOFR or the possible use of SOFR (or either of the other proposed rates) as a reference rate in financial contracts. As noted in the Request for Information, the publication of the Treasury repo rates is intended to improve transparency into the repo market by increasing the amount and quality of information available about the market for overnight Treasury repo activity. This information could be useful to market participants in a variety of ways. To the extent that market participants choose to use SOFR or another of the Treasury repo rates as a reference rate, details regarding the transition from U.S. Dollar LIBOR to that rate in particular markets are outside the scope of the Request for Information and this final **Federal Register** notice.

B. Calculation, Publication, and Governance of the Proposed Rates

The Board received a number of comments on the calculation, publication, and governance of the proposed rates. Commenters discussed the types of data that FRBNY will include in the rates, FRBNY's calculation methodology, and various issues related to publication and governance of the rates.

1. Data Sources

Three commenters suggested that the Federal Reserve and OFR should consider including additional Treasury repo activity in the proposed rates (*e.g.,* uncleared bilateral repos, FICC's Sponsored DVP Repo Service, and FICC's new CCIT™ Service) and should adopt a clear mechanism for including additional Treasury repo activity in the future. As noted in the Request for Information, each of the Treasury repo rates could be modified in the future in response to market evolution or to incorporate additional market segments if data become available. The Federal Reserve and OFR will monitor trading activity in new market segments and will consult with the public in deciding whether to include new data sources in the Treasury repo rates or make other compositional or methodological changes to the rates. The Board also notes that (1) FRBNY cannot currently include data regarding uncleared bilateral repos in the Treasury repo rates because there is no available data source for such information and (2) SOFR *will* include data from FICC's Sponsored DVP Repo Service.

A commenter asked the Board to provide more information regarding FRBNY's contract to acquire data from DTCC Solutions, stating that additional information would help market participants evaluate potential risks related to loss of access to data. The Federal Reserve and OFR are confident that the combination of the relevant provisions of the contract with DTCC Solutions and the data collection authorities of the OFR and Federal Reserve will ensure that they will be able to continue to produce robust rates under a variety of circumstances. In this regard, the Board notes that OFR informed the Financial Stability Oversight Council on November 16, 2017, that it intends to propose an information collection in the first half of 2018 to collect data regarding cleared repo transactions.[5]

Finally, a commenter suggested that the Board should use its supervisory authority to ensure that BNYM conducts its tri-party operations properly, including appropriate business continuity and other risk contingency planning. BNYM is a State member bank and is subject to comprehensive supervision by the Federal Reserve.[6] In particular, the Federal Reserve supervises BYNM's tri-party operations.[7]

2. Calculation Methodology

Two commenters supported the proposal to calculate the Treasury repo

[4] *See https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf.*

[5] *See https://www.financialresearch.gov/from-the-management-team/2017/11/22/ofr-update-on-bilateral-repo-collection/.*

[6] *See, inter alia,* section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and the Board's Regulation H (12 CFR part 208).

[7] The Board notes that the Federal Reserve has taken a variety of steps in recent years that have made tri-party repo infrastructure more resilient. *See https://www.newyorkfed.org/banking/tpr_infr_reform.html.*

rates using a volume-weighted median approach. One commenter suggested, however, that a volume-weighted average might be more appropriate because SOFR could have a bimodal distribution, with one peak representing relatively low tri-party rates and a second peak reflecting higher rates for GCF repos and repos cleared through FICC's DVP service. This commenter believed that, if SOFR has a bimodal distribution, small changes in the relative volumes of the two peaks could result in significant shifts in the median rate. FRBNY will use a volume-weighted median approach because, compared to a volume-weighted mean approach, it is more robust to erroneous data and outliers and more frequently reflects a transacted rate. Although the aggregation of heterogeneous market segments increases the risk of a multimodal distribution, FRBNY's historical analysis indicates that use of a volume-weighted median did not materially increase the volatility of the rate and that small shifts in the data did not cause significant shifts in the median rate. The Federal Reserve and OFR will review the composition and methodology of the rates over time and, as noted above, will consult with the public in deciding whether to make any compositional or methodological changes.

Multiple commenters asked the Board to clarify how FRBNY will trim specials from the proposed rates. One commenter supported exclusion of all bilateral transactions below the 25th volume-weighted percentile rate, while two commenters stated that they would need more data to evaluate whether this approach is sensible. Another commenter suggested other possible techniques for excluding outlier transactions. Federal Reserve and OFR staff considered several techniques for trimming specials activity, including removing all transactions collateralized by on-the-run and first-off-the-run securities.[8] The Board confirms that FRBNY will trim specials by excluding from the FICC-cleared bilateral data all transactions with rates below the 25th volume-weighted percentile. Analysis of various volume-weighted percentile thresholds revealed that excluding all activity trading below the 25th percentile rate struck an appropriate balance between removing the largest number of specials transactions and maintaining robust volume to use in calculating a rate.[9] This approach effectively removes transactions with rates that are notably lower than other transactions in the FICC-cleared bilateral data set, which indicates that the removed transactions are specials.

A commenter requested more information about how FRBNY will include ''open'' trades in the proposed rates. Open transactions are transactions with no specific maturity date for which the interest rate is periodically reset upon agreement by both borrower and lender. Although there are many forms of open transactions with different reset periods, those with daily rate resets are economically very similar to overnight transactions. On January 24, 2017, the Treasury Market Practices Group recommended a new best practice in the recording of daily-resetting open trades, which is expected to make daily-resetting trades easier to differentiate from open trades with different reset periods.[10]

Two commenters noted that SOFR tends to spike at quarter-ends and suggested that FRBNY apply a ''smoothing'' mechanism to minimize volatility of the proposed rates. The Board recognizes that rates in some segments of the Treasury repo market currently tend to increase at quarter-ends, but FRBNY will not apply a smoothing mechanism to the Treasury repo rates because doing so would provide an inaccurate view of that day's pricing in the Treasury repo market.

Finally, one commenter suggested that, even though the proposed rates would exclude transactions in which a Federal Reserve Bank is a counterparty, Federal Reserve activity in repo markets might distort rates in Treasury repos that do not involve a Federal Reserve Bank. The Federal Reserve implements monetary policy through multiple types of financial transactions, including repos. These open market operations affect all money market rates. The Board nevertheless believes that the Treasury repo rates will provide market participants with a transparent and comprehensive view of pricing in the Treasury repo market.

3. Publication Issues

One commenter stated that the proposed 8:30 a.m. ET publication time was appropriate. Another commenter asked the Federal Reserve to consider carefully whether publishing the rates at 8:30 a.m. would impact efficient market functioning. Three commenters believed that the proposed rates should be published earlier, explaining that 8:30 a.m. publication would be too late for some foreign financial markets and on certain days would coincide with some U.S. economic data releases. FRBNY will shift the publication time at least as early as 8:00 a.m. ET to avoid coincident release with key U.S. economic data. The Board and FRBNY will consider whether FRBNY can publish Treasury repo rates even earlier, but operational constraints—for example, constraints on the ability of FRBNY's data providers to produce and deliver data overnight and the time required for FRBNY to perform data validation and quality assurance processes—may prevent earlier publication.

A commenter asked for an explanation of how FRBNY would publish the proposed rates. FRBNY will publish the Treasury repo rates on its public website, similar to the manner in which FRBNY currently publishes the effective federal funds rate (EFFR) and the overnight bank funding rate (OBFR).[11]

Four commenters supported the proposal to publish summary statistics. One of these commenters suggested, however, that publishing statistics from the 1st and 99th percentiles would not be informative, and that FRBNY should instead publish summary statistics for percentiles *between* the 1st and 25th/75th and 99th percentiles (*e.g.,* the 5th and 95th percentiles). Initially, FRBNY will publish summary statistics as described in the Request for Information, and may publish additional percentiles on a lagged basis. After FRBNY begins publishing the Treasury repo rates, FRBNY will reassess whether market participants would benefit from additional summary statistics.

Three commenters requested that FRBNY publish historical data for SOFR. Commenters believed that historical data would serve a number of purposes—for example, commenters suggested that historical data would help market participants determine

[8] *See* Kathryn Bayeux, Alyssa Cambron, Marco Cipriani, Adam Copeland, Scott Sherman, and Brett Solimine, ''Introducing the Revised Broad Treasuries Financing Rate,'' Federal Reserve Bank of New York *Liberty Street Economics* (blog), June 19, 2017, *http://libertystreeteconomics.newyorkfed.org/2017/06/introducing-the-revised-broad-treasuries-financing-rate.html;* Bowman, David, Joshua Louria, Matthew McCormick, and Mary-Frances Styczynski (2017). ''The Cleared Bilateral Repo Market and Proposed Repo Benchmark Rates,'' FEDS Notes. Washington: Board of Governors of the Federal Reserve System, February 27, 2017, *https://doi.org/10.17016/2380-7172.1940.*

[9] For a fuller explanation of this approach, *see* ''Introducing the Revised Broad Treasuries Financing Rate,'' *http://libertystreeteconomics.newyorkfed.org/2017/06/introducing-the-revised-broad-treasuries-financing-rate.html.*

[10] *See https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/best-practices-tripartyrepo-170124.pdf.*

[11] *See https://apps.newyorkfed.org/markets/autorates/fed%20funds* and *https://apps.newyorkfed.org/markets/autorates/obfr.*

margin requirements for derivatives that reference SOFR and would help market participants compare SOFR to existing benchmarks. The Board recognizes that market participants might benefit from historical data. While longer histories of comparable commercially produced repo rates are publicly available, the Board believes that a significantly longer history of the Treasury repo rates may not be possible due to limitations on the availability of data. The Board and FRBNY will work with BNYM and DTCC to determine whether FRBNY can publish additional historical data for the Treasury repo rates.

Two commenters suggested that the proposed threshold of ''greater than one basis point'' for revising the proposed rates was too sensitive. Another commenter explained that its members had not achieved consensus on the threshold at which FRBNY should revise errors, but the commenter emphasized that FRBNY should articulate a clear rationale for its revision policy. The Board notes that, because FRBNY will round the Treasury repo rates to the nearest whole basis point, the threshold is effectively two basis points. The Board also notes that this is the same threshold employed for EFFR and OBFR, for which revisions are very rare. The Federal Reserve will periodically review the revision threshold to ensure that revisions are very rare and do not impose undue operational costs on users of the Treasury repo rates.

A commenter asked whether FRBNY would publish the proposed rates if relevant data sources were unavailable and, if so, whether FRBNY would correct such rates retroactively when data becomes available. Another commenter suggested that FRBNY should provide more information regarding the back-up repo market survey it would conduct if standard data sources are unavailable. As noted in the Request for Information, in the event that data sources are unavailable, the Treasury repo rates would be calculated based upon back-up repo market survey data collected from FRBNY's primary dealer counterparties. FRBNY currently collects repo data from primary dealers each morning. Going forward, FRBNY will also collect data each afternoon. The afternoon survey will capture that day's activity by primary dealers and will be available as a contingency data source for the following morning's publication of the Treasury repo rates. The survey will request aggregated primary dealer activity in each of the market segments captured in the Treasury repo rates: Overnight tri-party Treasury repo transactions, overnight Treasury repo transactions in the GCF market, and FICC-cleared bilateral Treasury repo transactions. For each of these market segments, each dealer will report its aggregate borrowing activity (excluding, to the extent possible, transactions between affiliated entities and transactions in which the Federal Reserve is a counterparty), along with the weighted-average rate of its borrowing. If FRBNY publishes Treasury repo rates that use survey data and subsequently receives updated data, FRBNY would issue same-day revisions at or around 2:30 p.m. ET if the use of updated data would result in the published rate changing by more than one basis point.

Finally, two commenters asked that FRBNY begin publishing the Treasury repo rates as soon as possible. FRBNY intends to begin publishing the Treasury repo rates in the second quarter of 2018.

4. Governance

A commenter suggested that governance arrangements for the Treasury repo rates should align with the *Principles for Financial Benchmarks* published by the International Organization of Securities Commissions (IOSCO) in July 2013.[12] FRBNY plans to publish an IOSCO statement of compliance covering the Treasury repo rates in the first half of 2018.

III. Conclusion

After considering public comments, the Board concludes that the public would benefit if FRBNY publishes the three Treasury repo rates as proposed, with certain modifications described above.

IV. Administrative Law

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the Request for Information and this final notice under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. As noted above, the data to be used to produce the rates will be obtained solely from (1) BNYM with respect to tri-party GC repo data and (2) DTCC Solutions with respect to GCF repo data and DVP bilateral repo data. Therefore, producing the rates will not involve a collection of information pursuant to the Paperwork Reduction Act.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an initial and a final regulatory flexibility analysis on the impact a rule is expected to have on small entities. The RFA imposes these requirements in situations where an agency is required by law to publish a general notice of proposed rulemaking for any proposed rule. The production of the rates does not create any obligations or rights for any private parties, including any small entities, and so the Board was not required to publish a notice of proposed rulemaking. Accordingly, the RFA does not apply and an initial and final regulatory flexibility analysis is not required.

The Board did not receive any comments regarding the Paperwork Reduction Act or the RFA.

By order of the Board of Governors of the Federal Reserve System, December 7, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–26761 Filed 12–11–17; 8:45 am]

BILLING CODE 6210–01–P

[12] *See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6063–N3]

Medicare Program; Extension of Prior Authorization for Repetitive Scheduled Non-Emergent Ambulance Transports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a 1-year extension of the Medicare Prior Authorization Model for Repetitive Scheduled Non-Emergent Ambulance Transport. The extension of this model is applicable to the following states and the District of Columbia: Delaware, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia.

DATES: This extension began on December 5, 2017 and ends on December 1, 2018. However, prior authorization is available upon provider, supplier, or beneficiary request for dates of service between December 2, 2017 and December 4, 2017.

FOR FURTHER INFORMATION CONTACT: Angela Gaston, (410) 786–7409. Questions regarding the Medicare Prior Authorization Model Extension for Repetitive Scheduled Non-Emergent

Ambulance Transport should be sent to *AmbulancePA@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Medicare may cover ambulance services, including air ambulance (fixed-wing and rotary-wing) services, if the ambulance service is furnished to a beneficiary whose medical condition is such that other means of transportation are contraindicated. The beneficiary's condition must require both the ambulance transportation itself and the level of service provided in order for the billed service to be considered medically necessary.

Non-emergent transportation by ambulance is appropriate if either the—(1) beneficiary is bed-confined and it is documented that the beneficiary's condition is such that other methods of transportation are contraindicated; or (2) beneficiary's medical condition, regardless of bed confinement, is such that transportation by ambulance is medically required. Thus, bed confinement is not the sole criterion in determining the medical necessity of non-emergent ambulance transportation; rather, it is one factor that is considered in medical necessity determinations.[1]

A repetitive ambulance service is defined as medically necessary ambulance transportation that is furnished in 3 or more round trips during a 10-day period, or at least 1 round trip per week for at least 3 weeks.[2] Repetitive ambulance services are often needed by beneficiaries receiving dialysis or cancer treatment.

Medicare may cover repetitive, scheduled non-emergent transportation by ambulance if the—(1) medical necessity requirements described previously are met; and (2) ambulance provider/supplier, before furnishing the service to the beneficiary, obtains a written order from the beneficiary's attending physician certifying that the medical necessity requirements are met (see 42 CFR 410.40(d)(1) and (2)).[3]

In addition to the medical necessity requirements, the service must meet all other Medicare coverage and payment requirements, including requirements relating to the origin and destination of the transportation, vehicle and staff, and billing and reporting. Additional information about Medicare coverage of ambulance services can be found in 42 CFR 410.40, 410.41, and in the Medicare Benefit Policy Manual (Pub. L. 100–02), Chapter 10, at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c10.pdf.*

According to a study published by the Government Accountability Office in October 2012, entitled ''Costs and Medicare Margins Varied Widely; Transports of Beneficiaries Have Increased,''[4] the number of basic life support (BLS) non-emergent transports for Medicare Fee-For-Service beneficiaries increased by 59 percent from 2004 to 2010. A similar finding published by the Department of Health and Human Services' Office of Inspector General in a 2006 study, entitled ''Medicare Payments for Ambulance Transports,''[5] indicated a 20 percent nationwide improper payment rate for non-emergent ambulance transport. Likewise, in June 2013, the Medicare Payment Advisory Commission published a report[6] that included an analysis of non-emergent ambulance transports to dialysis facilities and found that, during the 5-year period between 2007 and 2011, the volume of transports to and from a dialysis facility increased 20 percent, more than twice the rate of all other ambulance transports combined.

Section 1115A of the Social Security Act (the Act) authorizes the Secretary to test innovative payment and service delivery models to reduce program expenditures, while preserving or enhancing the quality of care furnished to Medicare, Medicaid, and Children's Health Insurance Program beneficiaries. Section 1115A(d)(1) of the Act authorizes the Secretary to waive such requirements of Titles XI and XVIII, as well as sections 1902(a)(1), 1902(a)(13), 1903(m)(2)(A)(iii), and 1934 (other than subsections (b)(1)(A) and (c)(5)) of the Act as may be necessary solely for purposes of carrying out section 1115A of the Act with respect to testing models described in section 1115A(b) of the Act. Consistent with this standard, we will continue to waive the same provisions for the extension of this model as have been waived for the initial three years of the model. Additionally, we have determined that the implementation of this model does not require the waiver of any fraud and abuse law, including sections 1128A, 1128B, and 1877 of the Act. Thus providers and suppliers affected by this model must comply with all applicable fraud and abuse laws.

In the November 14, 2014 **Federal Register** (79 FR 68271), we published a notice entitled ''Medicare Program; Prior Authorization of Repetitive Scheduled Non-emergent Ambulance Transports,'' which announced the implementation of a 3-year Medicare Prior Authorization model that established a process for requesting prior authorization for repetitive, scheduled non-emergent ambulance transport rendered by ambulance providers/suppliers garaged in 3 states (New Jersey, Pennsylvania, and South Carolina). These states were selected as the initial states for the model because of their high utilization and improper payment rates for these services. The model began on December 1, 2014, and was originally scheduled to end in all 3 states on December 1, 2017.

In the October 23, 2015 **Federal Register** (80 FR 64418), we published a notice titled ''Medicare Program; Expansion of Prior Authorization of Repetitive Scheduled Non-emergent Ambulance Transports,'' which announced the inclusion of 6 additional states (Delaware, the District of Columbia, Maryland, North Carolina, West Virginia, and Virginia) in the Repetitive Scheduled Non-Emergent Ambulance Transport Prior Authorization model in accordance with section 515(a) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10). These 6 states began participation on January 1, 2016, and the model was originally scheduled to end in all nine model states on December 1, 2017.

II. Provisions of the Notice

This notice announces that the Medicare Prior Authorization Model for Repetitive Scheduled Non-Emergent Ambulance Transport is being extended in the current model states of Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia, effective December 5, 2017, for an additional year to allow for additional evaluation of the model. Repetitive, scheduled non-emergent ambulance transport claims with dates of service of December 2, 2017 through December 4, 2017 will not be stopped for prepayment review if prior authorization is not requested before the fourth round trip in a 30-day period; however, providers, suppliers, and beneficiaries may request prior authorization for these dates of service. The model will now end in all states on December 1, 2018. Prior authorization will not be available for repetitive

[1] 42 CFR 410.40(d)(1).

[2] Program Memorandum Intermediaries/Carriers, Transmittal AB–03–106.

[3] Per 42 CFR 410.40(d)(2), the physician's order must be dated no earlier than 60 days before the date the service is furnished.

[4] Government Accountability Office Cost and Medicare Margins Varied Widely; Transports of Beneficiaries Have Increased (October 2012).

[5] Office of Inspector General Medicare Payment for Ambulance Transport (January 2006).

[6] Medicare Payment Advisory Commission, June 2013, pages 167–193.

scheduled non-emergent ambulance transportation services furnished after that date.

We will continue to test whether prior authorization helps reduce expenditures, while maintaining or improving quality of care, using the established prior authorization process for repetitive, scheduled non-emergent ambulance transport to reduce utilization of services that do not comply with Medicare policy.

We will continue to use this prior authorization process to help ensure that all relevant clinical or medical documentation requirements are met before services are furnished to beneficiaries and before claims are submitted for payment. This prior authorization process further helps to ensure that payment complies with Medicare documentation, coverage, payment, and coding rules.

The use of prior authorization does not create new clinical documentation requirements. Instead, it requires the same information that is already required to support Medicare payment, just earlier in the process. Prior authorization allows providers and suppliers to address coverage issues prior to furnishing services.

The prior authorization process under this model will continue to apply in the nine states listed previously for the following codes for Medicare payment:

- A0426 Ambulance service, advanced life support, non-emergency transport, Level 1 (ALS1).
- A0428 Ambulance service, BLS, non-emergency transport.

While prior authorization is not needed for the mileage code, A0425, a prior authorization decision for an A0426 or A0428 code will automatically include the associated mileage code.

We have conducted and will continue to conduct outreach and education to ambulance providers/suppliers, as well as beneficiaries, through such methods as updating the operational guide, frequently asked questions (FAQs) on our website, a physician letter explaining the ambulance providers/suppliers' need for the proper documentation, and educational events and materials issued by the Medicare Administrative Contractors (MACs). We are also working to implement a new process that will help identify alternate transportation resources for beneficiaries who receive non-affirmative decisions. Additional information about the implementation of the prior authorization model is available on the CMS website at *http://go.cms.gov/PAAmbulance.*

Under this model, submitting a prior authorization request is voluntary. However, an ambulance provider/supplier or beneficiary is encouraged to submit to the MAC a request for prior authorization along with all relevant documentation to support Medicare coverage of a repetitive, scheduled non-emergent ambulance transport. If prior authorization has not been requested by the fourth round trip in a 30-day period, the subsequent claims will be stopped for prepayment review.

In order for a prior authorization request to be provisionally affirmed, the request for prior authorization must meet all applicable rules and policies, including any local coverage determination (LCD) requirements for ambulance transport claims. A provisional affirmation is a preliminary finding that a future claim submitted to Medicare for the service likely meets Medicare's coverage, coding, and payment requirements. After receipt of all relevant documentation, the MACs will make every effort to conduct a review and postmark the notification of their decision on a prior authorization request within 10 business days for an initial submission. Notification will be provided to the ambulance provider/supplier and to the beneficiary. If a subsequent prior authorization request is submitted after a non-affirmative decision on an initial prior authorization request, the MACs will make every effort to conduct a review and postmark the notification of their decision on the resubmitted request within 20 business days.

An ambulance provider/supplier or beneficiary may request an expedited review when the standard timeframe for making a prior authorization decision could jeopardize the life or health of the beneficiary. If the MAC agrees that the standard review timeframe would put the beneficiary at risk, the MAC will make reasonable efforts to communicate a decision within 2 business days of receipt of all applicable Medicare-required documentation. As this model is for non-emergent services only, we expect requests for expedited reviews to be extremely rare.

A provisional affirmative prior authorization decision may affirm a specified number of trips within a specific amount of time. The prior authorization decision, justified by the beneficiary's condition, may affirm up to 40 round trips (which equates to 80 one-way trips) per prior authorization request in a 60-day period. Alternatively, a provisional affirmative decision may affirm less than 40 round trips in a 60-day period, or may affirm a request that seeks to provide a specified number of transports (40 round trips or less) in less than a 60-day period. A provisional affirmative decision can be for all or part of the requested number of trips. Transports exceeding 40 round trips (or 80 one-way trips) in a 60-day period require an additional prior authorization request.

The following describes examples of various prior authorization scenarios:

- *Scenario 1:* When an ambulance provider/supplier or beneficiary submits a prior authorization request to the MAC with appropriate documentation and all relevant Medicare coverage and documentation requirements are met for the ambulance transport, the MAC will send a provisional affirmative prior authorization decision to the ambulance provider/supplier and the beneficiary. When the subsequent claim is submitted to the MAC by the ambulance provider/supplier, it is linked to the prior authorization decision via the claims processing system, and the claim will be paid so long as all Medicare coding, billing, and coverage requirements are met. However, the claim could be denied for technical reasons, such as the claim was a duplicate claim or the claim was for a deceased beneficiary. In addition, a claim denial could occur because certain documentation, such as the trip record, needed in support of the claim cannot be submitted with a prior authorization request because it is not available until after the service is provided.
- *Scenario 2:* When an ambulance provider/supplier or beneficiary submits a prior authorization request, but all relevant Medicare coverage requirements are not met, the MAC will send a non-affirmative prior authorization decision to the ambulance provider/supplier and to the beneficiary advising them that Medicare will not pay for the service. The provider/supplier or beneficiary may then resubmit the request with additional documentation showing that Medicare requirements have been met. Alternatively, an ambulance provider/supplier could furnish the service and submit a claim with a non-affirmative prior authorization tracking number, at which point the MAC would deny the claim. The ambulance provider/supplier and the beneficiary would then have the Medicare denial for secondary insurance purposes and would have the opportunity to submit an appeal of the claim denial if they think Medicare coverage was denied inappropriately.
- *Scenario 3:* When an ambulance provider/supplier or beneficiary submits a prior authorization request with incomplete documentation, a detailed decision letter will be sent to the ambulance provider/supplier and to the beneficiary, with an explanation of what

information is missing. The ambulance provider/supplier or beneficiary can rectify the error(s) and resubmit the prior authorization request with appropriate documentation.

• *Scenario 4:* If an ambulance provider or supplier renders a service to a beneficiary and does not request prior authorization by the fourth round trip in a 30-day period, and the claim is submitted to the MAC for payment, then the claim will be stopped for prepayment review and documentation will be requested.

++ If the claim is determined to be for services that were not medically necessary or for which there was insufficient documentation, the claim will be denied, and all current policies and procedures regarding liability for payment will apply. The ambulance provider/supplier or the beneficiary, or both, can appeal the claim denial if they believe the denial was inappropriate.

++ If the claim is determined to be payable, it will be paid.

Under the model, we will work to limit any adverse impact on beneficiaries and to educate beneficiaries about the process. If a prior authorization request is non-affirmed, and the claim is still submitted by the ambulance provider/supplier, the claim will be denied, but beneficiaries will continue to have all applicable administrative appeal rights. We will also work to implement a process that will help identify alternate transportation resources for beneficiaries who receive non-affirmative decisions.

Only one prior authorization request per beneficiary per designated time period can be provisionally affirmed. If the initial ambulance provider/supplier cannot complete the total number of prior authorized transports (for example, the initial ambulance company closes or no longer services that area), the initial request is cancelled. In this situation, a subsequent prior authorization request may be submitted for the same beneficiary and must include the required documentation in the submission. If multiple ambulance providers/suppliers are providing transports to the beneficiary during the same or overlapping time period, the prior authorization decision will only cover the ambulance provider/supplier indicated in the provisionally affirmed prior authorization request. Any ambulance provider/supplier submitting claims for repetitive, scheduled non-emergent ambulance transports for which no prior authorization request is submitted by the fourth round trip in a 30-day period will be subject to 100 percent prepayment medical review of those claims.

Additional information is available on the CMS website at *http://go.cms.gov/PAAmbulance.*

III. Collection of Information Requirements

Section 1115A(d)(3) of the Act states that chapter 35 of title 44, United States Code (the Paperwork Reduction Act of 1995), shall not apply to the testing and evaluation of models or expansion of such models under this section. Consequently, this document need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

This document announces a 1-year extension of the Medicare Prior Authorization Model for Repetitive Scheduled Non-Emergent Ambulance Transport. Therefore, there are no regulatory impact implications associated with this notice.

Authority: Section 1115A of the Social Security Act.

Dated: November 16, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–26759 Filed 12–8–17; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0523]

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Applications for Food and Drug Administration Approval To Market a New Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 11, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0001. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for FDA Approval To Market a New Drug

OMB Control Number 0910–0001—Extension

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or (j) of the FD&C Act is effective with respect to such drug. The Agency has codified regulations regarding applications for FDA approval to market a new drug under 21 CFR part 314. This collection of information supports the regulatory requirements found in those regulations. The collection of information is necessary for FDA to make a scientific and technical determination whether the product is safe and effective for use, and is summarized as follows:

Section 314.50(a) requires that an application form (Form FDA 356h) be submitted that includes information about the applicant, the submission, and a checklist of enclosures.

Section 314.50(b) requires that an index be submitted with the archival copy of the application and that it reference certain sections of the application.

Section 314.50(c) requires that a summary of the application be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the new drug application (NDA) contain the following technical sections about the new drug: Chemistry, manufacturing,

and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; statistical; and pediatric use sections.

Section 314.50(e) requires the applicant to submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations be submitted with the archival copy.

Section 314.50(h) requires that patent information, as described under § 314.53, be submitted with the application. However, burden hours for § 314.50(h) are approved under OMB control numbers 0910–0513 (Patent Certification Forms FDA 3542 and FDA 3542a) and 0910–0786 (Abbreviated New Drug Applications (ANDAs) and 505(b)(2) Applications), and are therefore not included among the estimates found in table 1.

Section 314.50(i) requires that patent certification information be submitted in section 505(b)(2) applications for patents claiming the drug substance, drug product, or method of use. Sections 314.50(i)(1)(i)(C) and 314.54(i) and (j) require that patent certification information be submitted for each patent listed in the ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (the Orange Book) for a drug product approved in an NDA that is pharmaceutically equivalent to the proposed drug product in the original 505(b)(2) application and was submitted and was approved before the original 505(b)(2) application was submitted. Burden for these provisions is included under OMB control number 0910–0786.

Section 314.50(j) requires that applicants who request a period of marketing exclusivity submit certain information with the application.

Section 314.50(k) requires that the application contain a financial certification or disclosure statement or both.

Section 314.50(*l*) requires that an archival, review, and field copy of the application be submitted, including the content of labeling and all labeling and labels.

Section 314.52 requires that any notice of certification of invalidity, unenforceability, or non-infringement of a patent to each patent owner and the NDA holder be sent by a section 505(b)(2) applicant that relies on a listed drug. A 505(b)(2) applicant is required to amend the application at the time notice is provided to include a statement certifying that the required notice has been provided. A 505(b)(2) applicant also is required to amend the application to document receipt of the required notice. Burden hours for these provisions are included in OMB control number 0910–0786.

Section 314.53 sets forth the patent information requirements for applicants who submit applications or amendments to the application filed under section 505(b)(2) of the FD&C Act or supplements to the approved 505(b)(2) application. Burden hours for these collections are approved in OMB control number 0910–0786.

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the FD&C Act. The burden estimate for 505(b)(2) applications is included in table 1 under the estimates for § 314.50(a) through (g) and (i) through (*l*).

Section 314.55 sets forth the assessment requirements for each application. The burden estimate for 505(b)(2) applications is included in table 1 under the estimates for § 314.50(a) through (g) and (i) through (*l*).

Section 314.60 sets forth reporting requirements and patent certification requirements for sponsors who amend an unapproved 505(b)(2) application. Burden hours for the § 314.60(f) collections are approved under OMB control number 0910–0786.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements be submitted to FDA for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (2) set forth requirements for expedited adverse drug experience postmarketing reports and followup reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A).

Section 314.80(i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. The burden hours for § 314.80(i) are approved under OMB control numbers 0910–0230 (Adverse Drug Experience Reporting) and 0910–0291 (MedWatch: FDA's Medical Reporting Program), and therefore burden estimates are not included in table 1.

Section 314.81(b)(1) requires that NDA and ANDA field alert reports be submitted to FDA (Forms FDA 3331 and Form FDA 3331a).

Section 314.81(b)(2) requires that annual reports be submitted to FDA (Form FDA 2252).

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling be submitted to FDA (Form FDA 2253).

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. The burden hours for § 314.81(b)(3)(iii) are approved under OMB control number 0910–0045 (Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution), and therefore are not included in table 1.

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. The information collection burden estimate for NDA waiver requests is included in table 1 under the estimates for each section that is in part 314, subpart B.

Section 314.93 sets forth requirements for submitting a suitability petition to request a change from a listed drug in accordance with § 10.20 (21 CFR 10.20) and § 10.30. The burden hours for § 314.93 are approved under OMB control number 0910–0191 (Administrative Practices and Procedures; Formal Evidentiary Public Hearing) and are not included in table 1.

Section 314.94(a) through (d) require that an ANDA contain the following information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; and patent certification.

Section 314.95 requires that any notice of certification of invalidity or non-infringement of a patent to each patent owner and the NDA holder be sent by ANDA applicants.

Section 314.96 sets forth requirements for amendments to an unapproved ANDA.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for certain changes to the application. Approval of burden hours for information collections for §§ 314.95 through 314.97 are covered under OMB control number 0910–0786.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements for ANDAs. The burden hours for § 314.98(a) are approved under OMB control numbers 0910–0230 and 0910–0291 and are not included in table 1 of this document.

Section 314.98(b) requires other postmarketing reports for ANDAs: Field alert reports (Form FDA 3331a), annual reports (Form FDA 2252), and

advertisements and promotional labeling (Form FDA 2253). (The information collection burden estimate for field alert reports is included in table 1 of this document under § 314.81(b)(1); the estimate for annual reports is included under § 314.81(b)(2); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i).)

Section 314.99(a) requires that sponsors comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection burden estimate for ANDA waiver requests is included in table 1 of this document under the estimates for each section that is in part 314, subpart C.)

Section 314.101(a) states that if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application be filed over protest.

Section 314.102 covers communications between FDA and applicants, including requests for meetings.

Section 314.103 covers specified dispute resolution. To assist respondents with certain aspects of this requirement, we have issued draft guidance entitled ''Requests for Reconsideration at the Division Level Under GDUFA [the Generic Drug User Fee Act]; Guidance for Industry.''

Section 314.107(c) requires notice to FDA by the first applicant to submit a substantially complete ANDA containing a certification that a relevant patent is invalid, unenforceable, or will not be infringed of the date of first commercial marketing. The burden estimate for § 314.107(c) is included in table 1 under the estimates for § 314.50(a) through (g) and (i) through (*l*).

Section 314.107(e) requires that an applicant submit a copy of the entry of the order or judgment to FDA within 10 working days of a final judgment. The burden estimate for § 314.107(e) applications is included in table 1 under the estimates for § 314.50(a) through (g) and (i) through (*l*) and is approved under OMB control number 0910–0786.

Section 314.107(f) requires that ANDA or section 505(b)(2) applicants notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner must also notify FDA of the filing of any legal action for patent infringement. If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within the 45-day period, the patent owner or approved application holder may submit to FDA a waiver in the specified format. The burden estimate for § 314.107(f) is included in table 1 under the estimates for § 314.50 (a) through (g) and (i) through (*l*) and is approved under OMB control number 0910–0786.

Section 314.110(b)(3) states that, after receipt of an FDA complete response letter, an applicant must either: (1) Resubmit the application addressing all the deficiencies identified in the complete response letter; (2) withdraw the application; or (3) request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. The burden hours for § 314.110(b)(3) are included under parts 10 through 16 (21 CFR parts 10 through 16, OMB control number 0910–0191) hearing regulations, in accordance with § 314.201, and are not included in table 1.

Section 314.122(a) requires that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. The burden hours for § 314.122(a) are approved under OMB control number 0910–0191 and therefore are not included in table 1.

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. The burden hours for § 314.122(d) are approved under OMB control number 0910–0191 and therefore are not included in table 1.

Sections 314.125 and 314.127 state that FDA may refuse to approve an NDA or an ANDA and will provide the applicant written notice of an opportunity for a hearing under § 314.200 along with the reason for refusal to approve the application, including lack of a patent certification or statement with respect to each listed patent for an approved drug product that is pharmaceutically equivalent to the drug product for which the original 505(b)(2) application is submitted and was approved before the original 505(b)(2) was submitted. The burden hours for §§ 314.125 and 314.127 (refuse to approve an ANDA) are included under parts 10 through 16 hearing regulations (in accordance with § 314.201) and approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. The burden hours for § 314.126(c) are approved under OMB control number 0910–0191 and therefore are not included in table 1.

Sections 314.150(a) and (b) and 314.151(a) and (b) set forth requirements for the withdrawal of approval of an NDA or ANDA and the applicant's opportunity for a hearing and submission of comments. The burden hours for § 314.151(a) and (b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and approved under OMB control number 0910–0191 and therefore are not included in table 1.

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. The burden hours for § 314.151(c) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.153(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. The burden hours for § 314.152(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.161(b) and (e) sets forth the requirements for submitting a petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. The burden hours for § 314.161(b) and (e) are approved under OMB control number 0910–0191 and therefore are not included in table 1.

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. The burden hours for § 314.200(c), (d), and (e) are included under parts 10 through 16 hearing regulations, in accordance with

§ 314.201, are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.200(f) states that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. The burden hours for § 314.200(f) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.200(g) states that a person who responds to a proposed order from FDA denying a request for a hearing provide sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact, which justifies a hearing. The burden hours for § 314.200(g) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. The burden hours for § 314.430 are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.530(c) and (e) states that if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. The burden hours for § 314.530(c) and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.530(f) requires that an applicant first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. The burden hours for § 314.530(f) are approved under OMB control number 0910–0191, and therefore are not included in table 1.

Section 314.550 requires an applicant with a new drug product being considered for accelerated approval to submit copies of all promotional materials to FDA during the preapproval and post-approval periods.

Section 314.610(b)(1) requires that applicants include a plan or approach to postmarketing study commitments in applications for approval of new drugs when human efficacy studies are not ethical or feasible, and provide status reports of postmarketing study commitments. The burden estimate for § 314.610(b)(1) is included in table 1 under the estimates for §§ 314.50(a) through (f), (k), and (*l*); and 314.81(b)(2)).

Section 314.610(b)(3) requires that applicants propose labeling to be provided to patient recipients in applications for approval of new drugs when human efficacy studies are not ethical or feasible. The burden estimate for § 314.610(b)(3) is included in table 1 under the estimates for § 314.50(e).

Section 314.630 requires that applicants provide postmarketing safety reporting for applications for approval of new drugs when human efficacy studies are not ethical or feasible. The burden hours for § 314.630 are approved under OMB control numbers 0910–0230 and 0910–0291, and therefore not included in table 1.

Section 314.640 requires that applicants provide promotional materials for applications for approval of new drugs when human efficacy studies are not ethical or feasible. The burden estimate for § 314.640 is included in table 1 under the estimates for § 314.81(b)(3)(i)).

In the **Federal Register** of May 26, 2017 (82 FR 24351), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the four information collection topics solicited in the notice. However, one comment was received regarding NDA submission criteria, and we have directed the comment to the appropriate Agency component for consideration.

Accordingly, we estimate the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1 2]

21 CFR section/[FDA form No.]	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
314.50 (a)–(g), (i)–(*l*)—Content and format of a 505(b)(1) or 505(b)(2) application.	378	1.33	503	1,921	966,263
314.52—Non-infringement of patents (NDAs)	7	3	21	16	336
314.95—Non-infringement of patents (ANDAs)	209	3	627	16	10,032
314.60—Amendments	564	9.96	5,618	80	449,440
314.65—Withdrawal of unapproved applications	27	71.63	1,934	2	3,868
314.70 and 314.71—Supplements and submissions	838	7.04	5,897	150	884,550
314.72—Change of ownership	142	2.04	289	2	578
314.81—Other postmarketing reports and 314.81(b)(1) [3331 and 3331a] field alert reports.	342	19.98	6,834	8	54,672
314.81(b)(2) [2252]—Annual reports	913	5.07	4,632	40	185,280
314.81(b)(3)(i) [2253]—Promotional labeling	529	81.66	43,198	2	86,396
314.94(a) and (d)—ANDA content	180.5	3.75	676.5	480	324,720
314.96(a)(1)—Amendments to unapproved ANDAs	514	26.66	13,647	80	1,091,760
314.97—Supplements to ANDAs	343	17.57	6,027	80	482,160
314.99(a)—Responsibilities of ANDA Applicants	265	7.04	1,867	2	3,734
314.101(a)—ANDA filing	1	1	1	0.50 (30 minutes)	0.50
314.103—Dispute resolution	75	2	150	5	750
314.420—Drug Master Files	500	2.06	1,028	61	62,708
314.550—Promotional material and subpart H applications	29	7.76	225	120	27,000

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]—Continued

21 CFR section/[FDA form No.]	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					4,634,247.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] For most elements, ''Total Hours'' reflects estimated average burden as calculated by multiplying the number of respondents by the frequency of response and time necessary for the corresponding activity. In other instances, ''Total Hours'' is the average burden we attribute to all respondents, where individual respondent and time-frequency values have been estimated. All figures have been rounded to the nearest whole number.

We retain the currently approved burden estimate for the information collection associated with the provisions identified above. At the same time, we have added burden estimate associated with § 314.103, although in an effort to reduce burden, we have issued associated guidance to assist respondents with the relevant information collection.

Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26670 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1030]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Allergen Labeling and Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for declaring major food allergens under the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Submit either electronic or written comments on the collection of information by February 12, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 12, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of February 12, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–1030 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Allergen Labeling and Reporting.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/*

fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Allergen Labeling and Reporting

OMB Control Number 0910–0792—Extension

This information collection supports the reporting associated with the submission of petitions and notifications seeking exemptions from the labeling requirements for ingredients derived from major food allergens, and the Agency's associated guidance document.

I. Background

The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II, Pub. L. 108–282) amended the FD&C Act by defining the term ''major food allergen'' and stating that foods regulated under the FD&C Act are misbranded unless they declare the presence of each major food allergen on the product label using the name of the food source from which the major food allergen is derived. Section 403(w)(1) of the FD&C Act (21 U.S.C. 343(w)(1)) sets forth the requirements for declaring the presence of each major food allergen on the product label. Section 201(qq) of the FD&C Act (21 U.S.C. 321(qq)) defines a major food allergen as ''[m]ilk, egg, fish (*e.g.,* bass, flounder, or cod), Crustacean shellfish (*e.g.,* crab, lobster, or shrimp), tree nuts (*e.g.,* almonds, pecans, or walnuts), wheat, peanuts, and soybeans'' and also as a food ingredient that contains protein derived from such foods. The definition excludes any highly refined oil derived from a major food allergen and any ingredient derived from such highly refined oil.

In some cases, the production of an ingredient derived from a major food allergen may alter or eliminate the allergenic proteins in that derived ingredient to such an extent that it does not contain allergenic protein. In addition, a major food allergen may be used as an ingredient or as a component of an ingredient such that the level of allergenic protein in finished food products does not cause an allergic response that poses a risk to human health. Therefore, FALCPA provides two mechanisms through which such ingredients may become exempt from the labeling requirement of section 403(w)(1) of the FD&C Act. An ingredient may obtain an exemption through submission and approval of a petition containing scientific evidence that demonstrates that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(6) of the FD&C Act). Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

A. Third-Party Disclosure

The labeling requirements of section 403(w)(1) of the FD&C Act apply to all packaged foods sold in the United States that are regulated under the FD&C Act, including both domestically manufactured and imported foods. As noted, section 403(w)(1) of the FD&C Act requires that the label of a food product declare the presence of each major food allergen. We estimate the information collection burden of the third-party disclosure associated with food allergen labeling under section 403(w)(1) of the FD&C Act as the time needed for a manufacturer to review the labels of new or reformulated products for compliance with the requirements of section 403(w)(1) of the FD&C Act and the time needed to make any needed modifications to the labels of those products. The allergen information disclosed on the label or labeling of a food product benefits consumers who purchases that food product. Because even small exposure to a food allergen can potentially cause an adverse reaction, consumers use food labeling information to help determine their product choices.

FDA estimates the third-party disclosure burden of the collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

FD&C Act section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
403(w)(1); review labels for compliance with food allergen labeling requirements	77,500	1	77,500	1	77,500

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

FD&C Act section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
403(w)(1); redesign labels to comply with food allergen labeling requirements	3,875	1	3,875	16	62,000
Total					139,500

[1] There are no operating and maintenance costs associated with this collection of information.

We have retained the currently approved burden estimate associated with the information collection. Based on our experience with the information collection since it was established 3 years ago, we estimate that there are approximately 690,000 Universal Product Codes (UPCs) of FDA-regulated foods and approximately 85,000 UPCs of FDA-regulated dietary supplements for a total of 775,000 UPCs (Ref. 1). Using the labeling cost model, we estimate the entry rate of new UPCs to be 8 percent per year. Based on the entry rate of new UPCs, we estimate the rate of new or reformulated UPCs to be approximately 10 percent per year, or 77,500 products (775,000 × 10 percent). Thus, we estimate that, annually, 77,500 new or reformulated products are sold in the United States. Assuming an association of one respondent to each of the 77,500 new or reformulated products, we estimate that 77,500 respondents will each review the label of one of the 77,500 new or reformulated products. We estimate an average of 1 hour for the review of labels for compliance with the food allergen labeling requirements under section 403(w)(1) of the FD&C Act, for a total of 77,500 hours annually, as reflected in table 1, row 1.

We have no data on how many label reviews would identify the need to redesign the label. For purposes of this analysis, therefore, we estimate 5 percent, or 3,875 labels (77,500 × 5 percent) will be redesigned to comply with the requirements of section 403(w)(1) of the FD&C Act. Assuming an association of one respondent to each of the 3,875 redesigned labels and averaging 16 hours to complete the label redesign, we estimate a total of 62,000 hours annually for this activity, as reflected in table 1, row 2.

B. Reporting

Under sections 403(w)(6) and (7) of the FD&C Act, respondents may request from us a determination that an ingredient is exempt from the labeling requirement of section 403(w)(1) of the FD&C Act. An ingredient may obtain an exemption through submission and approval of a petition containing scientific evidence that demonstrates that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(6) of the FD&C Act). This section also states that ''the burden shall be on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that such food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health.'' Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

The guidance document entitled, ''Food Allergen Labeling Exemption Petitions and Notifications: Guidance for Industry,'' sets forth our recommendations with regard to the information that respondents should submit in such a petition or notification. The guidance states that to evaluate these petitions and notifications, we will consider scientific evidence that describes: (1) The identity or composition of the ingredient; (2) the methods used to produce the ingredient; (3) the methods used to characterize the ingredient; (4) the intended use of the ingredient in food; and (5) either (a) for a petition—data and information, including the expected level of consumer exposure to the ingredient, that demonstrate that the ingredient, when manufactured and used as described, does not cause an allergic response that poses a risk to human health; or (b) for a notification, data and information that demonstrate that the ingredient, when manufactured as described, does not contain allergenic protein, or documentation of a previous determination under a process under section 409 of the FD&C Act that the ingredient does not cause an allergic response that poses a risk to human health. We use the information submitted in the petition or notification to determine whether the ingredient satisfies the criteria of section 403(w)(6) and (7) of the FD&C Act for granting the exemption.

We estimate the reporting burden associated with the collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act Section/Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(w)(6); petition for exemption	5	1	5	100	500
403(w)(7); notification	5	1	5	68	340
Total					840

[1] There are no capital or operating and maintenance costs associated with the information collection.

Based on our experience with the collection thus far, we retain the currently approved burden estimate. Accordingly, we estimate that we will receive an average of five petitions and five notifications annually over the next 3 years. Assuming an association of one respondent to each petition or notification, we estimate that five respondents will each submit one petition and five respondents will each submit one notification. We estimate a petition takes, on average, 100 hours to develop and submit (Ref. 2). Therefore, we estimate the total burden associated with petitions will be 500 hours annually (5 petitions × 100 hours per petition).

The burden of a notification involves collecting documentation that a food ingredient does not pose an allergen risk. Either we can make a determination that the ingredient does not cause an allergic response that poses a risk to human health under a premarket approval or notification program under section 409 of the FD&C Act, or the respondent submits scientific evidence demonstrating that the ingredient when manufactured as described does not contain allergenic protein. We estimate it takes a respondent 20 hours to prepare and submit a notification based on our determination under a process under section 409 of the FD&C Act that the ingredient does not cause an allergic response. We estimate respondents may spend 100 hours to prepare a notification submitting scientific evidence (including the analytical method used) that demonstrates that the food ingredient (as derived by the method specified in the notification, where applicable) does not contain allergenic protein. We have no data on how many notifications would be based on our determination that the ingredient does not cause an allergic response or based on scientific evidence that demonstrates that the food ingredient does not contain allergenic protein. Therefore, we estimate that three of the five notifications would be based on scientific evidence, and two of the five notifications would be based on our determination. The average time per notification is then estimated to be 68 hours (2 × 20 hours + 3 × 100 hours)/5). Therefore, we estimate that the burden associated with notifications will be 340 hours annually (5 notifications × 68 hours per notification), as reflected in table 2.

II. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. RTI International, ''Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, Final Report.'' Prepared for Andrew Stivers, FDA/CFSAN. Prepared by Muth, M., M. Ball, M. Coglaiti, and S. Karns. RTI Project Number 0211460.005. March 2011.
2. Gendel, S.M., ''Food Allergen Petitions and Notifications.'' Memorandum to File. August 8, 2011.

Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26690 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6528]

Refusal of Inspection by a Foreign Food Establishment or Foreign Government; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Refusal of Inspection by a Foreign Food Establishment or Foreign Government.'' This draft guidance, when finalized, will provide information for foreign food establishments subject to our inspection, as well as foreign governments, on when we may consider that a foreign food establishment or a government of a foreign country has refused to permit an inspection by us as provided in the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the draft guidance by February 26, 2018 to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6528 for ''Refusal of Inspection by a Foreign Food Establishment or Foreign Government.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Compliance Policy Staff/Office of Compliance, Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Mischelle B. Ledet, Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–701–5986, or Eric Nelson, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5642, or Tyler Scandalios, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, 240–402–4552.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Refusal of Inspection by a Foreign Food Establishment or Foreign Government.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. The guidance is not subject to Executive Order 12866.

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353), enacted on January 4, 2011, amended the FD&C Act to expand and enhance our ability to ensure that imported food products meet U.S. standards and are safe for consumers. Among the FSMA changes to the FD&C Act, we now must refuse admission of a food into the United States if it is from a foreign factory, warehouse, or other establishment of which the owner, operator, or agent in charge, or the government of the foreign country, refuses to permit entry of United States inspectors or other individuals duly designated by the Secretary of Health and Human Services, upon request, to inspect such factory, warehouse, or other establishment (section 807(b) of the FD&C Act (21 U.S.C. 384c(b))). In addition, the FD&C Act, at section 807(b), states that an owner, operator, or agent in charge is considered to have refused an inspection if the owner, operator, or agent in charge does not permit an inspection of a factory, warehouse, or other establishment during the 24-hour period after we submit an inspection request, or after such other time period, as agreed upon by FDA and the foreign factory, warehouse, or other establishment.

This draft guidance, when finalized, will provide information for foreign food establishments subject to our inspection, as well as foreign governments, on when we may consider that a foreign food establishment or a government of a foreign country has refused to permit an inspection by us as provided in section 807(b) of the FD&C Act.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26692 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4487]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by January 11, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910—New and title ''Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion

OMB Control Number 0910—NEW

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act. Under the FD&C Act and implementing regulations, promotional labeling and advertising about prescription drugs are generally required to be truthful, non-misleading, and to reveal facts material to the presentations made about the product being promoted (see FD&C Act sections 201(n) and 502(a) and (n) (21 U.S.C. 321(n) and 352(a) and (n)); see also 21 CFR 202.1).

Prescription drug promotion sometimes includes false or misleading (collectively, deceptive [1]) claims, images, or other presentations; for instance, representations that a drug is more effective or less risky than is demonstrated by appropriate evidence. A number of empirical studies have examined the occurrence and influence of deceptive promotion, both in regard to prescription drugs (Refs. 1 and 2) and other products (Refs. 3 and 4). No research to our knowledge, however, has investigated the ability of consumers and healthcare professionals (HCPs) to independently identify deceptive prescription drug promotion.

The ability of consumers and HCPs to identify deceptive prescription drug promotion has important public health implications. If unable to identify deceptive promotion, consumers may ask their HCPs to prescribe specific drugs that they would not otherwise request. Likewise, HCPs who are unable to identify deceptive promotion may prescribe specific drugs that they would not otherwise prescribe. On the other hand, if consumers and HCPs are able to identify deceptive promotion, they may appropriately discount or disregard such information in their medication decisions, and perhaps even report deceptive promotion to appropriate government regulators who can take corrective action.

Reports of deceptive promotion are useful to FDA because they allow investigators to focus their efforts in an era where the amount of promotion far exceeds the resources available to review everything. The FDA Bad Ad program, for example, encourages HCPs to report deceptive prescription drug promotion (Ref. 5), a goal which requires that HCPs successfully identify such promotion when it appears in the course of their duties. Likewise, similar programs could be implemented for consumers to report deceptive prescription drug promotion to FDA.

The mission of the Office of Prescription Drug Promotion (OPDP) within FDA is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated, and to guard against deceptive promotion through comprehensive surveillance, enforcement, and educational programs. As part of this mission, it is critical that OPDP adequately understand the capacity of consumers and HCPs to detect false and misleading claims as well as these populations' processing of such claims. This understanding will help OPDP to identify best practices for addressing false and misleading claims in prescription drug promotion. The research described here will provide evidence to inform consideration of the approaches best suited to fulfill OPDP's mission to protect the public from deceptive promotion.

The proposed project involves two studies examining volunteer participants' ability to detect and report deceptive presentations in prescription drug promotion. The studies will be conducted concurrently and will focus on different health conditions. Each study will be administered to two separate populations (*i.e.,* HCPs and consumers affected by the condition). HCPs will view mock pharmaceutical websites targeted toward physicians and consumers will view mock consumer-targeted pharmaceutical websites. The goal will be to keep the HCP and consumer-targeted websites as similar as possible, but to include content that is appropriate for the target audience. For example, HCP websites may contain medical terminology, whereas the consumer websites would utilize consumer friendly language. A professional firm will create all mock websites such that they are generally indistinguishable from currently available prescription drug websites.

II. Study 1 and 2

Study 1 and 2 sample. Study 1 will sample consumers who self-report chronic pain that has lasted at least 3 months and HCPs whose primary medical specialty is either primary care or internal medicine and whose responsibilities involve direct patient care at least 50 percent of the time. Chronic pain has an incidence rate of roughly 11 percent (Ref. 6) in the population. Study 2 will sample consumers who self-report obesity, defined as body mass index greater than or equal to 30 (35 percent incidence; Ref. 7) and include the same types of HCPs as study 1. For both consumers and HCPs, pretest participants will not be eligible for the main study.

Pretesting. Pretesting will take place before the main studies to evaluate the procedures and measures used in the main studies. Each of the two pretests will have the same design as its respective main study (pretest 1 for Study 1 and pretest 2 for Study 2). The purpose of both pretests will be to: (1) Ensure that the mock websites are understandable, viewable, and delivering intended messages; (2) identify and eliminate any challenges to embedding the mock websites within the online survey; (3) ensure that survey questions are appropriate and meet the analytical goals of the research; and (4) pilot test the methods, including examining response rates and timing of survey. The two pretests will be conducted simultaneously. Based on pretest findings, we will refine the mock websites, survey questions, and data collection process, as necessary, to optimize the full-scale study conditions.

Main studies. The proposed design for the main studies, including sample sizes, is summarized below and described next.

[1] Our use of the term *deceptive* is not meant to imply equivalence (or lack thereof) with use of the same term by the U.S. Federal Trade Commission. As used in this document, this term refers to presentations that are considered false or misleading within the context of prescription drug promotion.

STUDY 1—DEGREE OF DECEPTION BASED ON THE NUMBER OF DECEPTIVE CLAIMS

Population	Experimental condition			
	None (control)	Fewer violations	More violations	Total
HCPs	125	125	125	375
Consumers w/chronic pain	125	125	125	375

STUDY 2—TYPE OF DECEPTION BASED ON IMPLICIT AND EXPLICIT CLAIMS

Population	Experimental condition			
	None (control)	Implicit	Explicit	Total
HCPs	125	125	125	375
Obese consumers	125	125	125	375

The purpose of Study 1 is to assess consumer and HCP response to promotional websites with varying levels of false or misleading presentations. In Study 1, degree of deception will be manipulated over three levels by altering the number of deceptive claims (none, fewer, more). It is possible that consumers and HCPs are only able to identify ads as deceptive when they include a greater number of violations, whereas ads with few violations may not be identified as deceptive. The experimental stimuli will be in the form of a web page for a fictitious drug targeted toward consumers who have chronic pain or toward HCPs. The deceptive websites will contain various types of violations. The website with fewer violations will contain a subset of the deceptive claims, imagery, or other presentations included in the website with more violations. For example, if the fewer-violations website includes two violations, then the more-violations website will include the same two violations plus two or three additional violations (in the form of claims and/or graphics).

Study 1 will help FDA address several key questions:

- What proportion of consumers and HCPs correctly identify a promotional piece as deceptive? Does the ability to identify deceptive promotion vary depending on the number of deceptive claims in a promotional piece?
- Does the degree of deception affect consumers' and HCPs' attitudes and behavioral intentions toward the promoted drug, including intended reporting to regulatory authorities?
- Is the effect of deceptive promotional pieces mediated by a person's ability to identify a promotional piece as deceptive (that is, do people who recognize a piece as deceptive discount the information in the piece, thereby adjusting their attitudes and intentions toward the product)?

Whereas Study 1 focuses on the *level* of deception (based solely on the number of false or misleading claims), Study 2 focuses on the *type* of deception (implicit versus explicit). Many deceptive promotional claims are implicit rather than being explicitly false (Refs. 1 and 4). An implicit claim suggests or implies an unstated piece of information. An explicit claim fully and clearly expresses information and leaves nothing to be implied. Study 2 will compare perceptions and beliefs that consumers and HCPs hold about a drug following exposure to one of three versions of a prescription drug website: (1) An explicitly false website, (2) a factually true but implicitly misleading website, or (3) a website with no deceptive claims (the control group).

As with Study 1, we envision a pair of one-way factorial experiments, one conducted with a sample of consumers and the other with HCPs. Similar to Study 1, Study 2 will investigate how misleading implicit claims and explicitly false claims in prescription drug promotional pieces influence a person's ability to detect and respond appropriately to deception. The experimental stimuli will be in the form of a mockup of a pharmaceutical website targeted toward the relevant experimental population, obese consumers or HCPs who treat obese patients. As with study 1, the drug profile, including indication, risks, and logo branding will be fictitious. For the implicit misleading claim manipulations, we are interested in whether people infer false beliefs from the implicit communications.

Study 2 will help FDA address several key questions:

- What proportion of consumers and HCPs correctly identify a promotional piece as deceptive? Does the ability to identify deceptive promotion vary depending on whether deceptive claims in a promotional piece are explicit versus implicit?
- Does the type of deception affect consumers' and HCPs' attitudes and behavioral intentions toward the promoted drug, including intended reporting to regulatory authorities?
- Is the effect of deceptive promotional pieces mediated by a person's ability to identify a promotional piece as deceptive (that is, do people who recognize a piece as deceptive discount the information in the piece, thereby adjusting their attitudes and intentions toward the product)?

Measurement. Identifying how to measure consumers' and HCPs' ability to identify deceptive promotion as well as their reaction to such promotion is fundamental to achieving the research goals. A literature review revealed the importance of using a variety of measures to capture detection of deception. For direct measures, we will incorporate questions that ask participants to indicate whether there was any deception in the promotional piece and to rate the promotional piece in terms of how deceptive, credible, or trustworthy it was. Additionally, we will include claim-specific direct measures that allow people to click on any part of the website that they deem deceptive. Using responses to this variable, we can assess whether participants think there is any deception in a promotional piece; in instances where they do think there is deception, we can assess what aspects of the website contributed to that belief. We will also include indirect measures that identify whether participants believed the website expressed particular claims (*e.g.,* claim recognition) as well as participants' beliefs about the veracity of any deceptive claims (*e.g.,* claim

truth, agreement, or acceptance). Moreover, we will assess whether participants believe the messages merit reporting to regulatory authorities (that is, FDA). To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance. A copy of the draft questionnaire is available upon request.

In the **Federal Register** of January 4, 2017 (82 FR 855), FDA published a 60-day notice requesting public comment on the proposed collection of information. Comments received along with our responses to the comments are provided below. Comments that are not PRA-relevant or do not relate to the proposed study are not included. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing. Question numbering here (*e.g.,* Q30) reflects numbering from the original draft questionnaire, shared by request at the time of the 60-day notice. The following acronyms are used here: FRN = Federal Register Notice; DTC = direct-to-consumer; HCP = healthcare professional; FDA and ''The Agency'' = Food and Drug Administration; OPDP = FDA's Office of Prescription Drug Promotion.

(Comment 1) *regulations.gov* tracking number 1k1–8ubr–t0de (verbatim with header and footer language removed):

We are supportive of the study, but have the following recommendations.

We propose that additional study arms be included that explore various scenarios/websites which test both the number of deceptive claims in conjunction with the degree of deception. Currently, the study is structured to measure the impact of the number of deceptions in a promotional website (Study 1) separately from the degree of the deception (explicit vs implicit, in Study 2). However, it would also be beneficial to measure other combinations to see which factor or combination of factors had the greatest impact on HCPs and Consumers' overall perception of the website. For example, a single explicit lie may be more impactful than 15 implied deceptions. The current study will not be able to draw any conclusions regarding that scenario. Testing additional combinations of the number of deceptions in a website along with deceptive claims of varying severity would enable a better comparison and understanding of what ultimately drives HCPs and Consumers' perception of deceptive prescription promotion.

(Response) We thank the commenter for their support and for this suggestion. While certainly a viable research idea, cost implications of creating and testing additional stimuli for this purpose bar us from pursuing it. We encourage researchers to pursue this idea in future research.

(Comment 2) *regulations.gov* tracking number 1k1–8v15–11b6 (some comments summarized for brevity; others provided verbatim):

a. Given the stated purpose of the pretests, sample size can be substantially reduced, and revised to a qualitative approach.

(Response) In addition to the quantitative pretest, we have already conducted a qualitative test of stimuli and questionnaire materials via cognitive interviews. Changes based on cognitive interviews are reflected in our updated survey materials. In regard to sample size, the number of pretest participants per experimental condition (n = 50) was chosen based on a power analysis, and is considered to be the minimum effective size to allow for assessment of the quantitative outcomes specified in the 60-day FRN. Examples of quantitative outcomes include assessment of response rates and timing of the survey.

b. To reduce bias, add a screening question to exclude respondents who are opposed to taking prescription medicines.

(Response) The survey length does not allow for a full exploration of attitudes toward prescription drug use. However, to assess opposition to prescription drug use more generally, we added one item to the survey that has been used successfully in previous FDA surveys. This item will be used in the pretest survey as a potential covariate and may or may not be retained in the main study survey depending on its performance.

The item reads: ''In what situations would you consider taking prescription drugs?''

- I would never take them.
- I would take them only for serious health conditions.
- I would take them for moderate and serious health conditions.
- I would take them for most health conditions, including minor problems.

c. Consider revising item scales to include a mid-point to allow respondents to express neutral views (unless objective is to force a selection).

(Response) Given the focus of the questions, we believe that offering a neutral response option is not necessary to measure opinions and attitudes accurately. Consequently, our objective is to force a selection and have participants make at least a weak commitment in either a positive or negative direction. Of concern is that offering a neutral midpoint could potentially encourage ''satisficing''—cuing participants to choose a neutral response because it is offered (Ref. 8). Additionally, providing a midpoint leads to the loss of information regarding the direction in which people lean (Ref. 9). Research has found that neither format (either with or without a neutral point) is necessarily better or produces more valid or reliable results (Ref. 10). Instead, it should be left to the researcher to determine the goals of the study. During cognitive testing, a majority of participants were satisfied with the response options and all participants felt comfortable choosing a response in the absence of a midpoint. Use of a midpoint is an issue we have examined in previous studies and we determined that we achieve valid and reliable responses without a midpoint. To increase consistency with measures used in previous studies, and in support of the arguments presented above, we are opting to exclude a midpoint. Finally, if a participant does not feel that they can choose a response because of a lack of a neutral option, they will be able to skip the question.

d. In Study 1, remove Q21 and Q30 due to potentially leading nature of items.

(Response) To avoid redundancy, we dropped Q21. In Q30, we ask participants to click on anything they think is misleading, and we note that if they do not think anything is misleading, they can click ''none.'' Consequently, we are not strongly presupposing there are misleading claims. To address some of the wording concerns for this item, we changed the question to ask about inaccurate information instead of misleading information and we moved the ''None'' response to be more prominent above the image.

(Comment 3) *regulations.gov* tracking number 1k1–8v3z–nzst (summarized for brevity):

The commenter expresses concern about the practical utility of the research, reasons for which are covered by comments 3a through 3e. In the case that FDA continues with the research, the commenter makes several recommendations which are covered by comments 3f through 3cc. Comments 3f through 3h concern the study stimuli, comment 3i pertains to subject recruitment, and comments 3j through 3cc concern the study questionnaires.

a. The identification of deceptive promotion is FDA's assigned

responsibility, not the duty of HCPs and consumers.

(Response) As discussed above, the mission of OPDP within FDA is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated, and to guard against false and misleading promotion through comprehensive surveillance, enforcement, and educational programs. As part of this mission, it is critical that OPDP adequately understand the capacity of consumers and HCPs to detect false and misleading claims as well as these populations' processing of such claims. This understanding will help FDA/OPDP to identify best practices for addressing deceptive claims in prescription drug promotion. Moreover, we note that sponsors are not generally required to submit promotional pieces to FDA prior to dissemination, and limited resources prevent OPDP from reviewing all promotional materials in the marketplace. Voluntary HCP and consumer reporting of false and misleading promotional pieces contribute to the accomplishment of FDA/OPDP's mission.

b. Deceptive drug promotion is not a prevalent issue that requires further studying.

(Response) Numerous studies have examined the prevalence of false or misleading claims and presentations in DTC advertising, and FDA frequently issues compliance letters addressing false and misleading claims and presentations (Refs. 1 and 2). Consequently, FDA disagrees with this assertion.

c. FDA's proposed studies fail to acknowledge the role of the HCP as the ''learned intermediary.''

(Response) The present research takes into consideration both consumer and HCP responses to false or misleading promotion. Consumers often wish to participate in shared decision making with HCPs when selecting prescription drugs and may request specific prescription drugs from their HCPs based on promotions they have seen in the marketplace. Because information consumers receive through DTC prescription drug promotion can impact these requests, it is important to investigate consumers' ability to assess prescription drug product efficacy and risks as conveyed in promotional pieces. And although HCPs have medical training and clinical expertise, we are not aware of research that investigates whether such training and expertise translates into an ability to detect false or misleading promotion in the marketplace. Consequently, the present research investigates both consumer and HCP ability to identify and discount deceptive prescription drug promotion.

d. The proposed studies are duplicative of recent FDA research concerning HCP willingness to report deceptive promotion.

The commenter suggests that if FDA wishes to investigate consumer reporting, the Agency should create two separate studies. The first should gauge consumer aptitude in identifying false or misleading prescription drug promotion. Depending on the results of the first study, the Agency could potentially undertake a second study, surveying subject willingness to report false or misleading drug promotion. This approach would avoid potential error associated with influence of earlier questions regarding deception on later questions regarding reporting.

(Response) FDA conducted a survey of HCPs in 2013 in which respondents were asked about their familiarity with the Bad Ad program and willingness to report misleading advertising (Ref. 5). The current study is quite different in scope from the previous research. The current study consists of an experimental design that will enable us to determine whether HCPs can detect misleading advertising, not just whether they are willing to report it. We do include questions at the end of the survey asking similar questions as those in the 2013 survey, but the purpose here is in connection to HCP ability to detect misleading advertising. Moreover, our use of similar questions here reflects a well-established technique in scientific research, used to determine whether previous findings can be replicated or not.

In response to the second comment recommending division of this project into two separate studies, we believe that proposal to be an inefficient use of resources. Regarding concerns about the order of questions affecting subsequent responses, we chose to distribute deception-related items throughout the survey, rather than ask all deception items first and then other outcome measures second. Also, we include ''masking'' items on the same screen as deception-related items to mask the intent of the questions. The results from cognitive interviews confirm that this approach was successful. Consequently, we have no evidence to suggest that earlier questions related to deception will influence subsequent questions related to reporting.

e. FDA already has created and implemented consumer programs to report deceptive promotion.

(Response) The proposed research can inform program needs at present, whether such needs involve reevaluation of past programs such as EthicAd, or extensions of existing programs such as the Bad Ad program or other actions.

f. Validating Stimuli. It is not clear how the Agency will determine that a study stimulus is deceptive. FDA notes in the PRA Notice that the ''term deceptive is not meant to imply equivalence (or lack thereof) with use of the same term by the U.S. Federal Trade Commission.'' It seems unrealistic for FDA to conduct research with primary care physicians (PCPs) and consumers who do not understand the Agency's standards or have access to the training and resources of an FDA reviewer.

Further, except for literal falsity, whether a particular communication is false or misleading must be based on empirical evidence. Promotional pieces do not exist in a vacuum. These communications interact with the overall health information ecosystem, including the internet. FDA needs to first validate that the study stimuli are indeed deceptive before including the stimuli in either proposed study with the presumption that they are deceptive.

(Response) Our reference to the Federal Trade Commission's (FTC) definition of the term ''deceptive'' was offered as a point of clarification for our use of the same term as shorthand within the FRN for the longer phrase ''false or misleading.'' In other words, by using ''deceptive'' as a term of art in this narrow context, we are not evoking the specific meaning and interpretation of the same term used by the FTC.

We disagree with the suggestion that participants need to have access to the training and resources of an FDA reviewer before FDA can evaluate their ability to identify deceptive promotion. As further explained below, FDA is not asking participants to determine whether nuanced text meets the regulatory standards for deceptive promotion; instead, we are presenting material that meets both the regulatory standard for a deceptive promotion and could be identified as such by consumers or healthcare providers with no prior experience with the regulations.

We agree with the second point about the need to validate that the study stimuli are deceptive, and we are doing this in several ways for this study. For example, some of the specific claims used in our experimental manipulations are established as being factually incorrect because the promoted drug is a member of a class of drugs for which the claim could not be true (*e.g.,* describing a serotonin-norepinephrine reuptake inhibitor (SNRI), which is

required to have a black box safety warning for suicide risk, as lacking in significant safety concerns). Other claims or presentations in the stimuli are based on similar claims cited as violative in past warning letters or that unambiguously fail to follow the law (*e.g.,* minimizing presentation of important safety information, such as a black box warning, by setting it in small, low contrast type). For one manipulated claim, we provided participants with access to the background information needed to identify the presentation as deceptive in the form of a footnote. In the case of Study 2, where a crucial aspect of the experimental design is to test an implicitly misleading claim in relation to an explicitly false claim and against a nonviolative control, we tested candidate claims in cognitive interviews to verify that the audience tended to interpret the implicit claims as intended.

Further, it is important to note that we included a control condition in both studies, which will enable us to compare responses to a website that has no violations. The control conditions serve as a baseline for perceived deception, which will also allow us to examine how consumers and providers perceive websites with no violations.

g. Media. The Agency proposes using websites as the only stimuli. FDA should consider testing additional non-electronic media, including DTC and HCP print promotional materials. The Agency should also base the promotional stimuli on realistic ''mock'' package insert (PI) documents. The commenter requests that FDA make available for public comment these materials.

(Response) Previous research on DTC and HCP-directed prescription drug promotional materials has, to varying extents, included all available media formats, and assessment of outcomes using these formats has proven useful. We agree that investigating recognition of misleading prescription drug information in multiple formats—including print, television, web, and other modes—would be valuable. However, we also recognize that no single study can effectively examine all promotional formats or presentations, and we chose to focus on branded drug websites for several reasons. First, websites, while not necessarily more or less useful than any other format, are arguably quite prevalent and important in today's technological age where a large segment of the consumer population is connected to the internet and known to seek information regarding prescription drugs using the internet. For example, online promotion is the fastest growing category of DTC drug marketing, and branded websites account for the largest share of this category (Ref. 11). Second, almost all print and television ads for prescription drugs encourage viewers to visit branded websites for more information, making these sites an important extension of promotion in other formats (Ref. 12). Third, FDA has issued multiple warning and notice of violation letters for branded drug websites that incorrectly communicate information to visitors, suggesting that there may be a problem with a proportion of such sites presenting misleading information. Fourth, websites serve as a fairly newer format for promotion relative to television and print promotion, and by consequence warrant further study. There has been significantly less research on consumer and provider interpretation of branded drug websites than other promotional formats (Ref. 13), and the extant research suggests that some websites still do not present a fair balance of risk and benefit information (Ref. 14).

Based on these considerations, we believe that focusing this study on branded drug websites will be the most effective use of FDA's limited resources. The fictitious websites included in this study were modeled on real products (including the package insert) to ensure realism and relevance.

In response to the request to share stimuli, we generally do not share stimuli before the study has been conducted to avoid possible inadvertent publication and therefore contamination of the subject pool, which would compromise the research.

h. Disease States. The Agency's two studies propose testing stimuli concerning chronic pain or obesity. The commenter suggests that FDA instead consider testing stimuli featuring a fictitious product for a disease state which involves more complex safety information. Such stimuli would be more reflective of the current healthcare environment, where product labeling is increasingly complex.

(Response) The fictitious websites used in this research do include complex safety information, which reflect the risks for real chronic pain and obesity products in the marketplace. For example, one of the fictitious products includes a black box warning, and the other includes severe and complex safety information, such as potential drug interactions and contraindications.

i. Study 1 Stimuli. In Study 1, the ''degree of deception will be manipulated over three levels by altering the number of deceptive claims (none, fewer, more).'' FDA states that the deceptive claims will include ''various types of violations.'' Under the potential design, the most egregious deceptive claim(s) might only be contained in the ''more'' level. This could potentially skew study results, as subjects would be more likely to identify such egregious claims. FDA should develop a scale that is used to determine the egregiousness of the deception. The scale should include specific examples of egregiousness by category.

(Response) Although some claims do not overlap between the ''fewer violations'' and ''more violations'' conditions, we strategically manipulated the stimuli so that one of the more ''egregiously'' deceptive claims (which appears in a callout bubble) is present in both conditions. There is also overlap in those two conditions for another manipulated element, where we minimized the prominence of the Important Safety Information. Additionally, we included an item (Q30) that would provide participants the opportunity to click on anything they think may be inaccurate. Using this question, we would expect that the more egregious claims will be chosen more often. In this way, this item would serve as a proxy measure of egregiousness. Further, our various questions that ask about perceived deceptiveness of the websites will provide an initial assessment of the degree of deception—with higher scores representing greater perceived deception. Because of space constraints on the survey, we are unable to ask participants to rate the egregiousness of the violative claims. Although we appreciate the value that developing a scale to determine the egregiousness of each of the deceptive claims would add, adopting this suggestion in the present research would be outside of the scope of this study and would have an impact on overall cost considerations.

j. FDA proposes that the HCP samples for both studies will only include physician subjects. The commenter believes the samples should include other types of HCPs, including nurse practitioners, physician assistants, and pharmacists. As the Agency's recent research showed, ''Nurse practitioners and physician assistants tended to see the [Bad Ad] program as more useful than [PCPs] and specialists. They also reported a greater likelihood of reporting false or misleading advertising in the future.'' Given these findings, it would be helpful also to investigate the ability of other HCPs independently to identify false or misleading promotion.

Additionally, during the recruiting process, FDA should ensure enrollment of a diversity of subjects across demographic categories. Previous research indicates that certain demographic groups respond to drug promotion in different manners. Uneven representation within certain categories could potentially skew study results.

(Response) FDA acknowledges and agrees with the assertion that including other types of HCPs in this research would provide value. Yet, sampling from these additional groups requires funding that may not be justified in this initial investigation of the topic area. Nonetheless, we do intend to strive for diversity in both our HCP and consumer samples. HCPs and consumers will vary in terms of age, race, and ethnicity, and consumers will additionally vary in terms of their education level.

k. Leading Questions. The overall format of the questionnaires is quite leading. As previously mentioned, questions asking whether sample advertisements are ''deceptive,'' ''misleading,'' ''bad,'' and ''not believable'' could easily pollute data from later questions inquiring whether a subject would potentially report such promotion to FDA. The Agency should state all questions in an objective manner.

(Response) Leading questions are those that ''suggest a possible answer or make some responses seem more acceptable than others'' (Ref. 15). In keeping with standard practice for balancing the valence of attitudinal questions, we have included a mix of positive and negative statements in the questionnaire. In fact, there are presently more positively framed items than negatively framed items. Moreover, the slider questions referenced by the commenter are semantic differentials, which show both a negatively framed word and its positive counterpart on opposite ends of the response scale (*e.g.,* ''deceptive/truthful,'' ''misleading/accurate,'' ''not believable/believable''). We do not see how these items could be construed as leading because both the positive and negative frames are presented. Finally, as stated in our response to Comment 3d, we have evidence to suggest that we successfully masked the true focus of the questionnaire, so the deception-focused items should not bias subsequent responses.

l. Recall Questions. Certain questions (*e.g.,* Q1–Q3 of Study 1, Q4 of Study 2) ask test subjects to recall specific risks and side effects of the featured drug products. Such questions are not valid instruments to assess whether a subject perceives a stimulus to be false or misleading. Recall is likely influenced by the presentation of the content (*e.g.,* size, visual display), not by the content itself. This research, however, is not material to the stated purpose of the studies. The recall questions should be omitted from the questionnaires.

(Response) Q1–Q2 of Study 1 measure risk recall and risk recognition. These are important outcome measures for our study because we vary how the risks are presented in the different experimental conditions, minimizing them (in terms of size and format) in the violative conditions. Including these risk recall and recognition measures allow us to test whether minimizing the risks influences participants' ability to remember them. Further, because minimization of risk is a misleading violation in its own right, reduced risk recall or recognition among participants in the violative conditions would provide relevant context for interpreting more direct measures of deception. Q4 of Study 2 will enable us to determine if participants can recall seeing the *disclosure* statements in the websites. This is relevant to the question of whether participants identify false or misleading content because the disclosure statement provides information that would help participants assess the truth of the headline claim. None of these items are intended to be direct measures of whether the stimuli are misleading; instead, they are outcomes that may be affected by misleading content.

m. Repetitive Questions. The questionnaires are repetitive in nature. For example, in Q4–Q11 of Study 1, subjects are asked a series of eight questions to measure ''Perceived Website Deception.'' The questions are redundant (*e.g.,* Believable/Not believable, Truthful/Deceptive, Factual/Distorted, Accurate/Misleading). This duplication may cause the subject to believe the promotional material is actually false or misleading.

(Response) The use of multiple items to tap into a singular construct is considered a best practice in social science research, particularly when assessing complex psychological constructs like those in this survey. Our intent is to combine responses to these items into a single composite score. Our cognitive interviewing of these items suggests that they have slightly different meanings for many participants and thus are not viewed as completely redundant. Further, there is no evidence to suggest that the use of multiple items to assess this construct led participants to believe that the promotional material was actually false or misleading or that this series of questions was designed to capture whether they thought the website was misleading. Consequently, we successfully masked the true intent of this item by including other bipolar response options unrelated to misleadingness.

We dropped Q21 to reduce redundancy across items.

n. Definitions and Terms. The questionnaires do not define certain key terms (*e.g.,* effectiveness, risk, misleading). Subjects, especially consumers, may interpret these terms based on different standards. FDA might consider providing user-friendly definitions for the consumer subjects. The Agency should also utilize patient-friendly medical terms, rather than complex terminology (*e.g.,* glaucoma, hepatic failure, SNRI).

(Response) Sophisticated medical terminology will only be used in the HCP survey. To use the example of ''hepatic failure,'' consumers will instead see ''decreased liver function.'' We have verified in cognitive interviews that preceded this study (and in our previous scale development efforts) that the terminology used is generally well understood by our participant sample.

o. Sliding Scale Format. FDA should consider replacing the sliding scale format with a ''Yes-No-I Don't Know'' scheme. The sliding-scale format is at times confusing in form and could potentially introduce error. Alternatively, the Agency should consider changing the sliding scale to an odd number system to permit a ''neutral'' response and/or use a variation of the Likert scale.

(Response) Use of a sliding scale allows for greater precision and variation in response, as opposed to a ''Yes-No-Don't Know'' format. Research suggests that scales with five to seven points are more valid and reliable than those with only two to three categories (Ref. 16). Additionally, we tested the sliding-scale format in previous cognitive interviews and found that it worked well; participants had little difficulty understanding this format. Further, as noted in the response to Comment 2c, we want to avoid leading participants to choose a ''Don't know'' response; providing this option may cue participants to select this response and avoid deeper thinking on the topic. Regarding the use of an even numbered scale rather than odd numbered scale, please see our response to Comment 2c.

p. An ''FDA employee'' category should be added to Question S2 [Consumer] of Study 1. These individuals should also be terminated from the study.

(Response) Consistent with previous surveys, we added a category to exclude

employees of the Department of Health and Human Services, which includes employees of FDA.

q. Question S3 [Consumer] of Study 1 should be rewritten as follows: ''Have you ever *been diagnosed with* chronic or long-lasting pain (more than aches and pains that go away quickly or are minor)?'' (emphasis added). This change aligns the question with the description of the study in the PRA Notice: ''Study 1 will sample consumers with diagnosed chronic pain that has lasted at least 3 months.''

(Response) We did not restrict people to be diagnosed with chronic pain because the prevalence was too small, which would increase the costs of the study. Using our current screening questions, we achieve an 11 percent prevalence rate (Ref. 6). The objective of our sampling plan is to target people that would be in the audience for the ads; being diagnosed is not a criterion.

r. Question S5 [Consumer] of Study 1 should be eliminated. Whether a subject still has chronic pain has no bearing on the study's purpose. Also, consider eliminating Question Q12 of Study 1. This question would only apply to those consumers currently being treated for chronic pain, not those who previously had the condition.

(Response) Assessing whether participants currently experience chronic pain helps to ensure a motivated sample for which the fictitious medication would potentially be of interest. Originally, we included participants that reported suffering from chronic pain in the past, but we did not require that they are currently suffering from chronic pain (although we had an item that asked ''Do you still have this chronic or long-lasting pain?''). After further consideration, we opted to revise the screener so that participants remain eligible if (a) they say ''Yes'' I still have chronic pain, or (b) they say ''No'' (or remain silent) about still having chronic pain *and* they are currently taking a prescription drug for chronic pain. This would also make the inclusion criteria for Study 1 consistent with the inclusion criteria for Study 2, which requires that a person currently suffers from the medical condition of interest. Consequently, Q12 of Study 1 will be relevant for all consumers completing the questionnaire.

s. Consider revising Question S5 [PCP] of Study 1 to inquire: (1) What percentage of the PCP's patients has each condition, and (2) how long the PCP has treated patients with each condition. A PCP's familiarity and experience with the treatment of the particular condition provides context and serves as a reference for detecting any potential deception in promotional materials.

(Response) We appreciate how these additional questions could provide valuable context and propose adding new items to our pretest survey (see below). We have found, in past work, that HCPs often have difficulty recalling precise information about their practice. Consequently, our approach is to assess this information more generally. However, to include some additional context, we included two additional items:

- Rate your current knowledge about prescription drugs for [weight loss/chronic pain] on a scale of 0 to 10, where 0 means knowing nothing and 10 means knowing everything you could possibly know about the topic.
- [If ''chronic pain''] Approximately what proportion of your current patients do you treat for chronic pain? (None or very few have chronic pain; a small proportion have chronic pain; about one-half have chronic pain; a large proportion have chronic pain; almost all have chronic pain).

t. Question Q2 of Study 1 should have a third answer choice: ''Don't remember.''

(Response) In cognitive interviews, very few people chose this response option. Moreover, in previous research, because so few people chose this response option, we often end up collapsing this response option with the response indicating that the referent was not mentioned in the website.

u. Questions Q5 and Q7 of Study 1 should be deleted. Whether a subject considers the website to be ''Bad/Good'' or ''Boring/Interesting'' has no relevance to FDA's study goals.

(Response) These items help to mask the overall intent of the other items in this series (*e.g.,* to assess whether the website is misleading). Also, they provide useful information about personal relevance and attitude toward the website, which we can use as potential covariates.

v. The commenter recommends revising Question Q17 of Study 1: ''How likely are you to ask your doctor about [Drug]?''

(Response) The intent of this item is to assess information-seeking more broadly, which can include, but is not limited to, asking one's doctor about a drug. While assessing how consumers access information from various sources (doctor, family members, etc.) is of interest, our survey does not have room to ask about each source individually. Given that there are multiple sources of information a consumer might consult for more information on a drug, we decided to address information-seeking more broadly with one question, rather than attempting to list all possible options.

w. Questions Q19 and Q21 of Study 1 should be removed. These questions require participants to guess whether the material would mislead people or ''takes advantage of less experienced'' consumers/providers. FDA should only ask participants about individual perception. Additionally, it is unclear what the Agency means by ''takes advantage of less experienced'' consumers/providers.

(Response) To avoid redundancy, we dropped Q21. We retained Q19 to ensure assessment of a critical construct. Because deception is a complicated construct to measure, we included a variety of items to capture the various dimensions of this construct. Based on a review of the literature, we recommend using a variety of relatively sensitive measures of ability to detect misleading advertisements to ensure we capture potentially meaningful variance. The inclusion of Q19 and Q21 were based on findings from the literature review that included measures that tapped into third-person perception (Ref. 17)—which is among the most widely replicated phenomena across media contents (Ref. 18), such as DTC prescription drug advertising (Ref. 19). By including an item that taps into third-person effects, we will be able to explore if consumers are more likely to think that others will be misled, even if they do not think they are susceptible to being misled by the website.

x. Question Q24 of Study 1 should be one of the first questions of the survey. A subject will likely answer this question most accurately immediately after reviewing the website and before answering other questions that could influence this answer.

(Response) To avoid bias, the most critical questions should appear as up front as possible in the surveys. Although current question ordering may bias responses to the attention item, this outcome is less consequential and we chose instead to prioritize the key dependent variables (putting those measures that rely on memory at the start of the survey). Consequently, we intend to retain the current order of questions in the survey.

y. The box for Question Q30 of Study 1 prompts the subject to respond, even if the individual did not select anything in the website as false or misleading. FDA should consider using a tiered response:

Q30a: Did you notice anything on the website that is false or misleading?

1. Yes (go to question 30b).

2. No (go to question 31).

Q30b: What information was false or misleading? [open box comment]

(Response) A programming note was missing in the original survey draft. The current survey programming reflects the approach suggested by the commenter.

z. The commenter recommends revising Question Q32 of Study 1 to: ''If there was a way to report misleading prescription drug websites or ads to the Food and Drug Administration (FDA) by sending an email or calling a toll-free phone number, how likely would you report misleading material?''

(Response) We have adopted this recommendation in the revised survey.

aa. As previously stated in footnote 21, Questions Q34, Q41, and Q42 of Study 1 should be deleted.

Footnote 21 reads: For example, FDA completed a HCP study incorporating information asked at Q34, Q41, and Q42 of Study 1. It is not clear why the Agency is undertaking another study focusing on such questions. These questions should be eliminated.

(Response) Please see our response to Comment 3d.

bb. Question S1 of Study 2 should be rewritten as follows: ''Have you ever been diagnosed with obesity, defined as body mass index greater than or equal to 30?'' This change aligns the question with the description of the study in the PRA Notice: ''Study 2 will sample consumers diagnosed with obesity. . . .''

(Response) For this study, our intent was to target people that would be in the audience for these ads, and being diagnosed is not a requirement for personal relevance. The target audience is consumers with a body mass index greater than or equal to 30.

cc. The ''Debriefing'' does not accurately portray the purpose of the studies. The purpose of the studies is not ''to learn about how people feel about information provided in prescription drug websites aimed at consumers/providers and how people use this information to understand how well prescription drugs work.'' The commenter recommends that the ''Debriefing'' read: ''The purpose of this study is to investigate the ability of consumers/providers to identify false or misleading prescription drug promotion and how likely consumers/providers are to report false or misleading prescription drug promotion to regulatory authorities.''

(Response) We have adopted this recommendation.

(Comment 4) *regulations.gov* tracking number 1k1–8v3r–jacf (summarized for brevity):

a. The commenter expressed concern about the practical utility of the consumer-oriented arms of the research. Namely, if consumers are unfamiliar with the prescribing information for the product, it is unclear on which basis they can determine a claim to be deceptive.

(Response) Please see our response to Comment 3f, which addresses a similar theme and may provide useful context. The concern addressed by the commenter is framed as a limitation of the study and appears to question the relevance of examining consumers' ability to detect deception in prescription drug promotion. We believe the opposite is correct: The merit of conducting the study is reinforced by the observation that it is unclear how consumers can determine a claim to be deceptive if they lack relevant background information or knowledge about an advertised drug. While prescription drug promotions are required to present truthful and non-misleading information, some prescription drug promotion nevertheless includes false or misleading claims, images, or presentations. DTC prescription drug promotion can help provide consumers with truthful information about drugs. When it does so, it can help consumers to make well-informed decisions when determining whether to explore treatment options and when making ultimate treatment choices, and it can provide useful and actionable information about a product's efficacy and risks to consumers already on treatment, among other outcomes. Yet, because the information in prescription drug promotion is not always truthful, consumers must make judgments about whether it is true, misleading, or false. And the same background knowledge that a consumer might rely on to identify a claim as deceptive would also be used to decide that a claim is true. As the commenter points out, this background information may be incomplete or inadequate for the task, and yet some presume that consumers (and, for that matter, healthcare providers) are typically able to distinguish between true claims and those that are false or misleading. Concerns like the one voiced here and the empirical literature on the topic suggest there is reason to doubt this presumption, thus warranting the proposed study.

b. The commenter expressed concern that the varied causes of obesity will result in a heterogeneous population which could potentially confound the results of the study.

(Response) We consider diversity within this illness population to be an asset. Also, random assignment will help to control extraneous influences because it will create groups that, on average, are probabilistically similar to each other. Because randomization eliminates most other sources of systematic variation, researchers can be reasonably confident that any effect that is found is the result of the intervention and not some preexisting differences between the groups (Ref. 20). Consequently, the varied causes of obesity should not impact the results. The primary intention of the research is to empirically examine consumer and HCP ability to detect and report deceptive prescription drug promotion, but we have to choose stimuli (and by extension, an illness population) in order to empirically test our research questions. By choosing illness conditions with diverse patient populations, we can better grasp how consumers and HCPs from all walks of life react to deceptive prescription drug promotion. Also see response to comment 3j.

(Comment 5) *regulations.gov* tracking number 1k1–8v3v–v60p (verbatim with header and footer language, introductory language, and supporting references removed):

We strongly support FDA's proposed project as part of the Agency's broader research efforts to better understand the impact of prescription drug promotion and direct-to-consumer advertising (DTC). Research regarding deceptive advertising is becoming increasingly important as DTC continues to grow at unprecedented rates. One analysis estimated DTC spending in 2015 at $5.2 billion—a growth of over 60 percent in just 4 years. Five drugs—HUMIRA, LYRICA, ELIQUIS, CIALIS, and XELJANZ—accounted for one-quarter of this $5.2 billion. Importantly, these figures are an underestimate, as they do not account for spending on digital ads and social media.

The risks and benefits of DTC have been well noted and debated. DTC may promote patient dialogue with healthcare providers and remove the stigma associated with certain diseases. However, there are also significant concerns that DTC may be misleading, overemphasize a drug's benefits as compared to risks, and lead to inappropriate prescribing and overutilization.

Again, we applaud the FDA's efforts in this important area. The need to better understand the ability of consumers and healthcare professionals to detect and report misleading DTC is critical as the use of DTC continues to

grow. Thank you for the opportunity to provide these comments.

(Response) FDA appreciates this support.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot study screener completes	4,286 (chronic pain) ..... 714 (obesity) 612 (HCP)	1	5,612	0.03 (2 minutes)	187
	5,612 total				
Main study screener completes.	10,714 (chronic pain) ..... 1,786 (obesity) 1,531 (HCP)	1	14,031	0.03 (2 minutes)	468
	14,031 total				
Pilot study completes	150 (chronic pain) ..... 150 (obesity) 300 (HCP)	1	600	0.33 (20 minutes)	200
	600 total				
Main study completes	375 (chronic pain) ..... 375 (obesity) 750 (HCP)	1	1,500	0.33 (20 minutes)	500
	1,500 total				
Total	.....	.....	.....	.....	1,355

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. References

The following references are on display in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26704 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–P–2659]

Determination That NOROXIN (Norfloxacin) Tablets, 400 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that NOROXIN (norfloxacin) tablets, 400 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for norfloxacin tablets, 400 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Darren Eicken, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6206, Silver Spring, MD 20993–0002, 240–402–0978.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NOROXIN (norfloxacin) tablets, 400 mg, is the subject of NDA 019384, held by Merck & Company, Inc. (Merck), and initially approved on October 31, 1986. NOROXIN is indicated for the treatment of adults with the following infections caused by susceptible strains of certain designated microorganisms: Uncomplicated urinary tract infections (including cystitis), uncomplicated urethral and cervical gonorrhea, and prostatitis.

In a letter dated October 13, 2015, Merck notified FDA that NOROXIN (norfloxacin) tablets, 400 mg, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book. In the **Federal Register** of October 4, 2016 (81 FR 68427), FDA announced that it was withdrawing approval of NDA 019384, effective November 3, 2016.

Jubilant Generics Ltd. submitted a citizen petition dated April 27, 2017 (Docket No. FDA–2017–P–2659), under 21 CFR 10.30, requesting that the Agency determine whether NOROXIN (norfloxacin) tablets, 400 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that NOROXIN (norfloxacin) tablets, 400 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that NOROXIN (norfloxacin) tablets, 400 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NOROXIN (norfloxacin) tablets, 400 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NOROXIN (norfloxacin) tablets, 400 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NOROXIN (norfloxacin) tablets, 400 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26693 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–4079]

Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements.'' The guidance clarifies the requirements for product name placement, size, prominence, and frequency in promotional labeling and advertisements for human prescription drugs, including prescription biological products, and for animal prescription

drugs. This guidance finalizes the revised draft guidance issued on November 20, 2013 (''Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling'').

FDA is also announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: The announcement of the guidance is published in the **Federal Register** on December 12, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910—New and title ''Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements.'' Also, include the FDA docket number found in brackets in the heading of this document.

You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–1999–D–4079 for ''Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding human prescription drugs:* Sheila Ryan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3320, Silver Spring, MD 20993–0002, 301–796–1200. *Regarding human prescription biological products:* Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911. *Regarding animal prescription drugs:* Thomas Moskal, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6251.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements.'' This guidance clarifies the requirements for product name placement, size, prominence, and frequency in promotional labeling and advertisements for human prescription drugs, including prescription biological products, and for animal prescription drugs. The disclosure of the product

name in promotional labeling and advertisements for all human prescription drugs, including prescription biological products, and animal prescription drugs is important for the proper identification of such products to ensure their safe and effective use.

The placement, size, prominence, and frequency of the proprietary and established names for human prescription drugs, including prescription biological products, and for prescription animal drugs are specified in labeling and advertising regulations (21 CFR 201.10(g) and (h) and 202.1(b), (c), and (d)).

The recommendations in this guidance pertain to product names in traditional print promotional labeling and advertisements (*e.g.,* journal ads, detail aids, brochures), audiovisual promotional labeling (*e.g.,* videos shown in a health care provider's office), broadcast advertisements (*e.g.,* television advertisements, radio advertisements), and electronic and computer-based promotions (*e.g.,* internet, social media, emails, CD–ROMs, DVDs).

In the **Federal Register** of November 20, 2013 (78 FR 69691), FDA announced the availability of the revised draft guidance entitled ''Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling.'' FDA received one comment on the revised draft guidance, which requested additional clarification on the individual recommendations in the guidance, and FDA considered this comment as the guidance was finalized. In addition to a title change and editorial changes made primarily for clarification, the guidance has been revised to clarify certain concepts discussed in the revised draft guidance and to provide examples illustrating prominence issues.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Product Name Placement, Size, and Prominence in Promotional Labeling and Advertisements.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. The information collection requests in support of the guidance are discussed below. Specifically, the guidance discusses the requirement in FDA's regulations for prescription drug promotional labeling and advertisements to include the established name in conjunction with the proprietary name, and explains FDA recommendations that:

- Firms should include the established name at least once per page or spread where the proprietary name most prominently appears.
- The established name should be placed either directly beside or below the proprietary name without any intervening matter.
- The size of the established name should be at least half the size of the presentation of the proprietary name wherever the established name is required.
- For superimposed text that is equivalent to a headline or tagline, the established name should be presented alongside the most prominent presentation of the proprietary name in audiovisual promotional materials (promotional labeling and broadcast advertisements).
- For electronic and computer-based promotion, the established name should accompany the proprietary name at least once per Web page, and this should generally be where the proprietary name most prominently appears on the Web page.

Thus, the guidance recommends that firms disclose certain information to others to fulfill the product name placement requirements found in FDA's regulations. This ''third-party disclosure'' constitutes a ''collection of information'' under the PRA. Disclosures in advertising pursuant to 21 CFR 202.1 are covered by an existing information collection (OMB control number 0910–0686), so this information collection request covers only disclosures in labeling in accordance with 21 CFR 201.10(g) and (h).

In the **Federal Register** of November 20, 2013, FDA published a 60-day notice requesting public comment on the proposed collection of information and the estimated annual burden for third party disclosure. FDA received no comments in response to the four information collection topics solicited in the notice. FDA has received more up-to-date submission data since the 60-day notice published, therefore, we have adjusted our estimates of respondents and disclosures accordingly. The estimated amount of time per disclosure has not changed. We therefore estimate the burden associated with the information collection as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Guidance recommendations	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure (in hours)	Total hours
Disclosures Related to Product Name Placement, Size, and Prominence	407	256.4	104,358	3	313,074

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As reflected in table 1, we provide an estimate of the annual third-party disclosure burden associated with this collection of information. The placement, size, prominence, and frequency of the proprietary and established names for human prescription drugs, including prescription biological products, and animal prescription drugs are specified in labeling and advertising regulations (21 CFR 201.10(g) and (h); 202.1(b), (c) and (d); and 610.62). Using calendar year 2015 data, FDA estimates that, for prescription human and animal drugs and biological products, approximately 407 firms disseminate approximately 104,358 advertisements and promotional pieces each year. We further estimate that the burden hours associated with the regulatory requirements would be approximately 3 hours per disclosure.

FDA is issuing this final guidance subject to OMB approval of the information collection. Before implementing the information collection provisions of the guidance, FDA will publish a notice in the **Federal Register** announcing OMB's decision to

approve, modify, or disapprove the collections of information, including OMB control number(s) for newly approved collections.

This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information associated with 21 CFR 202.1 have been approved under OMB control number 0910–0686.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm, https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm,* or *https://www.regulations.gov.*

Dated: December 7, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26725 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0015]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Products Development; Food and Drug Administration Orphan Drug Designation Request Form and The Common European Medicines Agency/Food and Drug Administration Form for Orphan Medicinal Product Designation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 11, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0167. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Products Development; Food and Drug Administration Orphan Drug Designation Request Form and The Common European Medicines Agency/Food and Drug Administration Form for Orphan Medicinal Product Designation (Formerly Orphan Drugs; Common European Medicines Agency/FDA Application Form for Orphan Medicinal Product Designation (Form FDA 3671))—21 CFR Part 316

OMB Control Number 0910–0167—Extension

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360aa–360dd) give FDA statutory authority to do the following: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the FD&C Act and sets forth procedures FDA will use in administering the FD&C Act with regard to orphan drugs.

Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Based on past experience, FDA estimates that there will be one respondent to §§ 316.10, 316.12, and 316.14 requiring 50 hours of human resources annually.

Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.21 specifies content of a request for orphan drug designation required for verification of orphan-drug status. Section 316.26 allows an applicant to amend the applications under certain circumstances. Based on past experience, FDA estimates 496 respondents to §§ 316.20, 316.21, and 316.26, requiring 83,700 hours of human resources annually.

The Common EMEA/FDA Application for Orphan Medicinal Product Designation form for orphan designation of drugs intended for rare diseases or conditions (Form FDA 3671) is intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from both the European Commission and FDA by reducing the burden of preparing separate applications to meet the regulatory requirements in each jurisdiction. It highlights the regulatory cooperation between the United States and the European Union mandated by the Transatlantic Economic Council. The FDA Orphan Drug Designation Request Form (Form FDA 4035) is intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from only FDA. The form is a simplified method for sponsors to provide only information required by 21 CFR 316.20 for FDA to make a decision. Based on past experience, FDA estimates there will be 496 respondents using the form requiring 19,840 hours of human resources annually.

Section 316.22 specifies requirement of a permanent resident agent for foreign sponsors. Based on past experience, FDA estimates 70 respondents requiring 140 hours of human resources annually.

Section 316.24(a) specifies a requirement that sponsors respond to deficiency letters from FDA on designation requests within 1 year of issuance of the deficiency letter, unless within that time frame, the sponsor requests an extension of time to respond. Based on past experience, FDA estimates 20 respondents requiring 40 hours of human resources annually.

Section 316.27 specifies content of a change in ownership of orphan-drug designation. Based on past experience, FDA estimates 63 respondents requiring 315 hours of human resources annually. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. Based on number of orphan-drug designations, the number of respondents is estimated as 744 requiring 2,232 hours of human resources annually. Finally, § 316.36 describes information required of sponsor when there is insufficient quantity of approved orphan drug. Based on past experience, FDA estimates two respondents requiring 90 hours of human resources annually.

The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

In the **Federal Register** of June 19, 2017 (82 FR 27836), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/Form FDA	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Content and format when seeking written recommendations; results of studies; and amendments (§§ 316.10, 316.12, and 316.14)	1	1	1	50	50
Content and format of a request for designation; request for verification of status; amendment to designation	496	1.25	620	135	83,700
Form FDA 3671 or 4035 FDA Orphan Drug Designation Request Form (§§ 316.20, 316.21, and 316.26)	1.25	620	32	19,840	
Notifications of changes in agents (§ 316.22)	70	1	70	2	140
Deficiency letters and granting orphan-drug designation (§ 316.24(a))	20	1	20	2	40
Submissions to change ownership of orphan-drug designation (§ 316.27)	63	1	63	5	315
Annual reports (§ 316.30)	744	1	744	3	2,232
Assurance of the availability of sufficient quantities of the orphan drug; holder's consent for the approval of other marketing applications for the same drug (§ 316.36)	2	3	6	15	90
Total					106,407

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has experienced increases in: (1) The number of submissions to change ownership of orphan-drug designation (§ 316.27), (2) the number of annual reports (§ 316.30), and (3) assurances of the availability of sufficient quantities of the orphan drug and the holder's consent for the approval of other marketing applications for the same drug (§ 316.36).

Dated: December 6, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26669 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6397]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Calorie Labeling of Articles of Food in Vending Machines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions for calorie labeling of articles of food in vending machines.

DATES: Submit either electronic or written comments on the collection of information by February 12, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 12, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of February 12, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–6397 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Calorie Labeling of Articles of Food in Vending Machines.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Calorie Labeling of Articles of Food in Vending Machines

OMB Control Number 0910–0782—Extension

This information collection supports FDA regulations under § 101.8 (21 CFR 101.8) and Form FDA 3757. Under § 101.8(d) vending machine operators not subject to the requirements of section 403(q)(5)(H)(viii) (21 U.S.C. 343(q)(5)(H)(viii)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) may, through an authorized official, voluntarily register with FDA to be subject to those requirements. Those who do voluntarily register must provide FDA with contact information, the address of the location of each vending machine owned or operated by the vending machine operator that is being registered, the preferred mailing address (if different from the vending machine operator address) for purposes of receiving correspondence, and certification that the information submitted is true and accurate, that the person or firm submitting the information is authorized to do so, and that each registered vending machine will be subject to the requirements of § 101.8(c)(2). We have developed Form FDA 3757 entitled, ''DHHS/FDA Menu and Vending Machine Labeling Voluntary Registration,'' to assist respondents in this regard. To keep the establishment's registration active, the authorized official of the vending machine operator must register every other year within 60 days prior to the expiration of the vending machine operator's current registration with

FDA. Registration will automatically expire if not renewed.

It should be noted that an article of food sold from a vending machine whose operator has voluntarily registered with FDA under the regulations is not required to provide calorie declarations for articles of food sold from a vending machine that permits the prospective purchaser to examine the Nutrition Facts label before purchasing the article as provided in § 101.8(b)(1), or otherwise provides visible nutrition information at the point of purchase as provided in § 101.8(b)(2).

FDA estimates the burden of the collection of information as follows:

Reporting Burden

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 101.8/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
§ 101.8(d); initial registration (Form FDA 3757)	13	1	13	2	26
§ 101.8(d); registration renewal (Form FDA 3757)	19	1	19	0.5 (30 minutes)	9.5
Total	35.5				

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As reflected in table 1, we retain the currently approved reporting burden estimate for the information collection. At this time, we lack comprehensive data on the number of vending machine operators with fewer than 20 machines that might voluntarily register to comply with the regulations and, as indicated in our final rule of December 1, 2014 (79 FR 71259) establishing the information collection, no vending machine operators have voluntarily registered with FDA. Therefore, while we expect relatively few submissions, we have provided a conservative estimate of the burden respondents may encounter.

We estimate there are approximately 757 vending machine operators with fewer than 20 machines; this number is based on the mean estimate of the low and high counts of firms with less than $50,000 in annual revenue. We estimate that 5 percent of vending machine operators with fewer than 20 machines may voluntarily register to become subject to the final requirements, or 38 operators. We estimate a burden of approximately 2 hours per initial registration, which yields a total burden of 76 hours (38 total operators × 2 hours per response). Annualizing this number over 3 years yields a rounded 13 respondents per year (5 percent × 757 operators/3 years). With an annualized estimate of 13 vending machine operators and one registration per vending machine operator at 2 hours per registration, we estimate the initial hourly burden for these operators is 26 hours.

We expect that renewal registrations after the first year will require substantially less time because operators are expected to be able to affirm or update the existing information in an online account in a way similar to other FDA firm registration systems. Therefore, we estimate that re-registration will take 0.5 hours for each registrant. This indicates that biennial registration would impose a burden of 19 hours (38 operators × 0.5 hours) every 2 years, or 9.5 hours every year (19 operators every year × 0.5 hours).

Recordkeeping Requirements

We have omitted providing a burden estimate associated with generating, providing, or maintaining records associated with calorie analysis and recording because the regulations do not require vending machine operators to maintain such records. However, we have considered the ''time, effort, or financial resources'' expended by covered vending machine operators to declare calories for covered vending machine food and have included the burden in table 2 as part of the third-party disclosure burden. We are particularly interested in hearing from respondents to the information collection regarding calorie declaration signage.

Third-Party Disclosure Requirements

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Part 101	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure (in hours)	Total hours
§ 101.8(c)(2)(i); calorie analysis	282	11	3,102	1	3,102
§ 101.8(c)(2)(ii); calorie declaration signage	3,279	2,122	6,958,346	0.21 (12.5 minutes)	1,494,403
§ 101.8(e)(1); vending operator contact information	3,279	125	409,875	.025 (1.5 minutes)	10,248
Total					1,507,753

[1] There are no capital costs or operating and maintenance costs associated with the information collection.

As reflected in table 2, we have retained the currently approved third-party burden estimate for the information collection.

Under the regulations, we calculate three types of third party disclosure burden. The first burden estimate reflects the time and effort we believe necessary for vending machine operators to determine the calorie content of covered vending machine food for the required calorie declarations as described in § 101.8(c)(2)(i). We refer to this as a ''calorie analysis.'' A calorie analysis entails the burden of determining calorie content for covered vending machine food. Most foods sold from vending machines provide the nutrition labeling required by section 403(q) of the FD&C Act and 21 CFR 101.9, including calorie content information, which means that calorie content for many covered vending machine foods is

already available on the Nutrition Facts labels for such foods. In that case, vending machine operators will not need to determine the calorie content of such foods because they can simply declare the calorie information they find on the Nutrition Facts label. Nevertheless, some operators may need to determine calorie information for those vending machine foods that may not bear Nutrition Facts labels or otherwise provide visible nutrition information at the point of purchase in accordance with section 403(q)(5)(H)(viii)(I)(aa) of the FD&C Act and § 101.8(b). An operator may obtain the necessary calorie information from nutrient databases, cookbooks, or laboratory analyses. Calorie analysis will most likely only be needed for vended food items such as refrigerated, frozen, can/bowl, or other shelf-stable main meal items, hot cup beverages, and cold cup beverages.

We estimate the mean number of vending machine operators that need calorie analysis to be 847. Annualizing this estimate over 3 years yields 282 operators. We also estimate the range of products available in a typical machine for each of the three most commonly sold product categories that are likely to require a calorie analysis, or 3 percent of food items, 5 percent of hot beverages, and 1 percent of cold cup beverages. We estimate that food machines typically offer between 10 and 25 different items, and both hot beverage and cold cup beverage machines typically offer between 5 and 10 items. From this, we estimate each vending machine operator will require a calorie analysis for 11 items, on average. These estimates are based upon conversations with vending machine operators and our survey of various vending machine models that vend these types of food and beverage, as discussed in our final rule. Based on available data, we estimate the time needed to determine the calorie content of each covered vending machine food to be approximately 1 hour. Our estimate for the burden hours required for new calorie analysis is then 9,317 hours (847 operators × 11 products needing analysis × 1 hour per analysis). Annualizing this value over 3 years yields 3,102 hours (847 operators/3 years × 11 products needing analysis × 4 hours per analysis). (847 operators/3 years = 282 operators per year.) This is reflected in table 2, row 1.

The second burden estimate reflects burden associated with calorie declaration signage as described in § 101.8(c)(2)(ii). Covered vending machine operators with 20 or more vending machines and vending machine operators that voluntarily register to become subject to the Federal requirements must disclose calorie information by providing calorie declaration signs in, on, or adjacent to their vending machines to a third party who will most often be the prospective purchaser or consumer.

We estimate there is an average of 9,838 (9,800 covered non-bulk + 38 voluntary) vending machine operators subject to the regulations (9,838/3 = 3,279 annualized). Our estimate for the average number of non-bulk vending machines that will require declaration signage is based upon data relied upon in our final rule (see references 1, 6 to 8 under Docket No. FDA–2011–F–0171). We estimate there is an average of 5.61 million non-bulk vending machines. Digital signage is an emerging technology, and according to available sources, approximately 0.1 percent of all vending machines in operation currently have electronic video displays capable of providing calorie information, or approximately 4,014 to 5,670 vending machines. Subtracting the number of vending machines with the electronic video from the total machine count yields an average of 5.61 million vending machines that will need signage. We expect the number of vending machines that will require signage to decline over time as manufacturers continue to add the required calorie information to the principal display panel of the package as part of ''front of package labeling,'' and because we anticipate greater use of electronic video displays on vending machines. In addition, to the extent that covered vending machines sell foods that permit prospective purchasers to examine the Nutrition Facts label before purchase or otherwise provide visible nutrition information at the point of purchase in accordance with section 403(q)(5)(H)(viii)(I)(aa) of the FD&C Act and § 101.8(b), this analysis may overestimate the burden estimate for calorie declaration signs.

Vending machine operators can create one sign that contains all of the information for the products offered in the vending machine, and do not have to create individual signs for each item. The number of templates a given firm would need to design to produce signs that comply with the regulations may vary based upon the number of different types of products the firm purveys. In our estimate, we have considered the time it takes for template design, sign creation, sign installation, updates, replacement, and bulk machine signage. Cumulatively we estimate that those 3,279 (annualized) vending machine operators subject to the regulations will expend a total 1,494,403 hours to fulfill the requirements under § 101.8(c)(2)(ii) regarding signage for calorie declarations. This is reflected in table 2 row 2. We note that while we previously provided burden estimates for individual disclosure activities found under § 101.8(c)(2)(ii) in our final rule of December 1, 2014 (79 FR 71259 at 71286), we have consolidated them here into one entry. Because this is the first extension request for this information collection and we have limited available data, we are specifically interested in respondents' experience with the third-party burden associated with the requirements under § 101.8(c)(2)(ii).

Finally, we have provided a burden estimate associated with § 101.8(e)(1) requiring a vending machine operator subject to section 403(q)(5)(H)(viii) of the FD&C Act or a vending machine operator that voluntarily registers to provide contact information. We assume that venders that do not already have a sign or label with their contact information will add their contact information into the initial sign design. We estimate the time it takes to include contact information is 1.5 minutes (0.025 hours) for each sign. We estimate the total initial burden for including contact information on the predesigned templates to be 30,744 hours (9,838 operators × 125 sign formats × 0.025 hours per sign). Annualized over 3 years, this burden becomes 10,248 hours (9,838 operators/3 years × 125 signs × 0.025 hours per sign). (Some States have licensing requirements for vending machine operators, and some of these licensing requirements already require the vending machine operator's license or contact information to be displayed on the vending machine.) If the contact information displayed on a vending machine due to State or local requirements includes some but not all of the contact information required under § 101.8(e)(1), the vending machine operator is required to display the remaining contact information required under § 101.8(e)(1) in a manner specified under § 101.8(e)(1). We do not have an estimate of the number of machines already in compliance; to the extent that some operators are already in compliance, we overestimate the associated burden for third-party disclosure.) This is reflected in table 2, row 3.

Dated: December 5, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26672 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1021]

Notice to Public of Website Location of Center for Devices and Radiological Health Fiscal Year 2018 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the website location where the Agency will post two lists of guidance documents that CDRH (or the Center) intends to publish in fiscal year (FY) 2018. In addition, FDA has established a docket where interested persons may comment on the priority of topics for guidance, provide comments and/or propose draft language for those topics, suggest topics for new or different guidance documents, comment on the applicability of guidance documents that have issued previously, and provide any other comments that could benefit the CDRH guidance program and its engagement with stakeholders. This feedback is critical to the CDRH guidance program to ensure that we meet stakeholder needs.

DATES: Submit either electronic or written comments by February 12, 2018.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–1021 for ''Notice to Public of Website Location of CDRH Fiscal Year 2018 Proposed Guidance Development.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations on the Medical Device User Fee Amendments of 2012 (MDUFA III), Title II, Food and Drug Administration Safety and Innovation Act (Pub. L. 112–114), FDA agreed to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. Among these commitments included:

• Annually posting a list of priority medical device guidance documents that the Agency intends to publish within 12 months of the date this list is published each fiscal year (the ''A-list''), and

• Annually posting a list of device guidance documents that the Agency intends to publish, as the Agency's guidance-development resources permit each fiscal year (the ''B-list'').

The Medical Device User Fee Amendments of 2017 (MDUFA IV), FDA Reauthorization Act of 2017 (Pub. L. 115–52) maintained these commitments.

FDA welcomes comments on any or all of the guidance documents on the lists as explained in 21 CFR 10.115(f)(5). FDA has established Docket No. FDA–2012–N–1021 where comments on the FY 2018 lists, draft language for guidance documents on those topics, suggestions for new or different guidances, and relative priority of guidance documents may be submitted and shared with the public (see **ADDRESSES**). FDA believes this docket is a valuable tool for receiving information from interested persons and will update these lists after considering public comments, where appropriate. FDA anticipates that feedback from interested persons will allow CDRH to better prioritize and more efficiently draft guidances to meet the needs of the Agency and our stakeholders.

In addition to posting the lists of prioritized device guidance documents,

FDA has committed to updating its website in a timely manner to reflect the Agency's review of previously published guidance documents, including the deletion of guidance documents that no longer represent the Agency's interpretation of or policy on a regulatory issue.

Fulfillment of these commitments will be reflected through the issuance of updated guidance on existing topics, removal of guidances that no longer reflect FDA's current thinking on a particular topic, and annual updates to the A-list and B-list announced in this notice.

II. CDRH Guidance Development Initiatives

A. Finalization of Draft Guidance Documents

CDRH has identified as a priority, and has devoted resources to, finalization of draft guidance documents. To assure the timely completion or re-issuance of draft guidances, in FY 2015 CDRH committed to performance goals for current and future draft guidance documents. For draft guidance documents issued after October 1, 2014, CDRH committed to finalize, withdraw, re-open the comment period, or issue new draft guidance on the topic for 80 percent of the documents within 3 years of the close of the comment period and for the remaining 20 percent, within 5 years. As part of MDUFA IV commitments, FDA reaffirmed this commitment, as resources permit. In addition, in FY 2017, CDRH withdrew 4 of 8 draft guidances issued prior to October 1, 2011, and has been continuing to work towards taking an action on the remaining draft guidances. Looking forward, in FY 2018, CDRH will strive to finalize, withdraw, or re-open the comment period for 50 percent of existing draft guidances issued prior to October 1, 2012.

B. Earlier Stakeholder Involvement in Guidance Development

CDRH has received feedback that stakeholders desire earlier involvement in the guidance process and has taken steps to create a mechanism to address this request. In FY 2016, in anticipation of guidance documents expected to be developed, CDRH sought stakeholder input regarding electromagnetic compatibility of electrically powered medical devices and regarding utilizing animal studies to evaluate the safety of organ preservation devices and solutions. FDA appreciated the feedback received and considered it in the development of these guidances. Demonstrating commitment to incorporating stakeholder input, CDRH issued a draft guidance in FY17 on utilizing animal studies to evaluate the safety of organ preservation devices, and is progressing toward issuance of draft policies reflecting early stakeholder input as appropriate.

FDA also welcomes any additional feedback for improving the guidance program and the quality of CDRH guidance documents.

C. Applicability of Previously Issued Final Guidance

CDRH has issued over 600 final guidance documents to provide stakeholders with the Agency's thinking on numerous topics. Each guidance reflected the Agency's current position at the time that it was issued. However, the guidance program has issued these guidances over a period of 30 years, raising the question of how current previously issued final guidances remain. CDRH has resolved to address this concern through a staged review of previously issued final guidances in collaboration with stakeholders. At the website where CDRH has posted the ''A-list'' and ''B-list'' for FY 2018, CDRH has also posted a list of final guidance documents that issued in 2008, 1998, 1988, and 1978.[1] CDRH is interested in external feedback on whether any of these final guidances should be revised or withdrawn. In addition, for guidances that are recommended for revision, information explaining the need for revision, such as the impact and risk to public health associated with not revising the guidance, would also be helpful as the Center considers potential action with respect to these guidances. CDRH intends to provide these lists of previously issued final guidances annually through FY 2025 so that by 2025, FDA and stakeholders will have assessed the applicability of all guidances older than 10 years. For instance, in the annual notice for FY 2019, CDRH expects to provide a list of the final guidance documents that issued in 2009, 1999, 1989, and 1979; the annual notice for FY 2020 is expected to provide a list of the final guidance documents that issued in 2010, 2000, 1990, and 1980, and so on. CDRH will consider the comments received from this retrospective review when determining priorities for updating guidance documents and will revise these as resources permit.

In FY 2017, CDRH received comments regarding guidances issued in 2007, 1997, and 1987, and has withdrawn 32 guidance documents in response to comments received and because these guidance documents were determined to no longer represent the Agency's current thinking. The revision of several guidance documents is also being considered as resources permit.

Consistent with the Good Guidance Practices regulation at 21 CFR 10.115(f)(4), CDRH would appreciate suggestions that CDRH revise or withdraw an already existing guidance document. We request that the suggestion clearly explain why the guidance document should be revised or withdrawn and, if applicable, how it should be revised. While we are requesting feedback on the list of previously issued final guidances located in the annual agenda website, feedback on any guidance is appreciated and will be considered.

III. Website Location of Guidance Lists

This notice announces the website location of the document that provides the A and B lists of guidance documents, which CDRH is intending to publish during FY 2018. To access these two lists, visit FDA's website at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm580172.htm.* We note that the topics on this and past guidance priority lists may be removed or modified based on current priorities, as well as comments received regarding these lists. Furthermore, FDA and CDRH priorities are subject to change at any time (*e.g.,* newly identified safety issues). The Agency is not required to publish every guidance on either list if the resources needed would be to the detriment of meeting quantitative review timelines and statutory obligations. In addition, the Agency is not precluded from issuing guidance documents that are not on either list.

Stakeholder feedback on guidance priorities is important to ensure that the CDRH guidance program meets the needs of stakeholders. The feedback received on the FY 2017 list was mostly in agreement, and CDRH continued to work toward issuing the guidances on this list. In FY 2017, CDRH issued 9 of 27 guidances on the FY 2017 list (6 from the A-list, 3 from the B-list). At this time, CDRH has decided not to pursue several guidances that were on the FY 2017 A or B list, due to factors including feedback from industry.

[1] The retrospective list of final guidances does not include the following: (1) Documents that are not guidances but were inadvertently categorized as guidance such as scientific publications, advisory opinions, and interagency agreements; (2) guidances actively being revised by CDRH; and (3) special controls documents.

Dated: December 7, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–26721 Filed 12–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee; Amendment

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; amendment.

SUMMARY: A notice was published in the **Federal Register** on November 27, 2017, announcing an in-person meeting of the Chronic Fatigue Syndrome Advisory Committee (CFSAC) on Wednesday, December 13, 2017, from 9:00 a.m. until 3:30 p.m. and Thursday, December 14, 2017, from 9:00 a.m. until 5:00 p.m. The meeting will be held at the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW, Washington, DC 20201. The notice is being amended to provide security procedures to enter the Hubert H. Humphrey Building. Individuals interested in attending the meeting in person need to show a state or federal government issued I.D. with a photograph. Individuals can also email the CFSAC inbox (*cfsac@hhs.gov*) in order to have their names added to a list of attendees. However, it is still necessary for individuals to present a photo I.D. to gain entrance to Hubert H. Humphrey Building. All participants will be escorted to the meeting room. Space is limited.

FOR FURTHER INFORMATION CONTACT: CDR Gustavo Ceinos, 202–690–7650; Email address: *cfsac@hhs.gov.*

Dated: December 6, 2017.

Gustavo Ceinos,

CDR, USPHS, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 2017–26739 Filed 12–11–17; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held on January 24, 2018, of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to *CARB@hhs.gov.* Registration information is available on the website *http://www.hhs.gov/ash/carb/* and must be completed by January 15, 2018; all in-person attendees must pre-register by this date. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/ash/carb/* on the Meetings page.

DATES: The meeting is scheduled to be held on January 24, 2018, from 9:00 a.m. to 5:00 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the Advisory Council at *http://www.hhs.gov/ash/carb/* when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than January 15, 2018; public attendance at the meeting is limited to the available space.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW, Washington, DC 20201.

The meeting can also be accessed through a live webcast on the day of the meeting. For more information, visit *http://www.hhs.gov/ash/carb/.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, Acting Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 715H, Washington, DC 20201. Phone: (202) 690–5566; email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under Executive Order 13676, dated September 18, 2014, authority was given to the Secretary of HHS to establish the Advisory Council, in consultation with the Secretaries of Defense and Agriculture. Activities of the Advisory Council are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to support and evaluate the implementation of Executive Order 13676, including the National Strategy for Combating Antibiotic-Resistant Bacteria and the National Action Plan for Combating Antibiotic-Resistant Bacteria. The Advisory Council shall function solely for advisory purposes.

In carrying out its mission, the Advisory Council will provide advice, information, and recommendations to the Secretary regarding programs and policies intended to preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The public meeting will be dedicated to two main activities. The Advisory Council will deliberate and vote on a letter drafted by the Immediate Action Subcommittee. The remainder of the day will be focused on the topic of antibiotic stewardship in food and companion animals. The meeting agenda will be posted on the Advisory Council website at *http://www.hhs.gov/ash/carb/* when it has been finalized. All agenda items are tentative and subject to change.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Advisory Council at the address/telephone number listed above at least one week prior to the meeting. For those unable to attend in person, a

live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/ash/carb/.*

Members of the public will have the opportunity to provide comments prior to the Advisory Council meeting by emailing *CARB@hhs.gov.* Public comments should be sent in by midnight January 15, 2018, and should be limited to no more than one page. All public comments received prior to January 15, 2018, will be provided to Advisory Council members; comments are limited to two minutes per speaker.

Dated: December 7, 2017.

Jomana F. Musmar,

Acting Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Committee Manager.

[FR Doc. 2017–26738 Filed 12–11–17; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

Date: December 14, 2017.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding schedule.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 6, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–26703 Filed 12–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–NEW]

Agency Information Collection Activities: 287(g) Needs Assessment; New Collection

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-day notice.

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (USICE) is submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on September 18, 2017, Vol. 82 FR 43566, allowing for a 60-day public comment period. USICE did not receive any comment relating to the 60-day notice. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1653–NEW.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: New information collection.

(2) Title of the Form/Collection: 287(g) Needs Assessment.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State or Local governments. This questionnaire is used for the purposes of allowing ICE to evaluate a state or local law enforcement agency that has expressed interest in partnering with ICE under Section 287(g) of the Immigration and Nationality Act so that its officers may be delegated the authority to perform the functions of an immigration officer under a signed memorandum of agreement. The prospective law enforcement agency provides this information to ICE as part of ICE's process to evaluate the agency's suitability to partner with ICE.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 60 minutes (1 hour) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 50 annual burden hours.

Dated: December 6, 2017.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2017–26673 Filed 12–11–17; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below, that we will submit to OMB for revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves requesting information from flight and cabin crew members of air carriers to verify employment status to confirm eligibility to participate in voluntary advanced self-defense training provided by TSA. Each crew member will also be required to complete an electronic Injury Waiver Form. Additionally, each participant is asked to complete an anonymous course evaluation at the conclusion of the training.

DATES: Send your comments by February 12, 2018.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (EO) 13771, Reducing Regulation and Controlling Regulatory Costs, and EO 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking a revision of the ICR, currently approved under OMB control number 1652–0028, to continue compliance with a statutory mandate. Under 49 U.S.C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

TSA must collect specific information in order to provide the program to eligible participants as well as assess training quality. This information includes limited biographical information from flight and cabin crew members to confirm their eligibility to participate in this training. TSA uses the information to confirm the eligibility of the participant by contacting the participant's employer.

TSA currently collects the following information at the time of registration online: Name of the crew member, airline affiliation, position, crew member airline identification (ID) number, crew member contact information (home mailing address, last four digits of the crew member's social security number (SSN), home telephone number and/or email address), and the city and state of the TSA Office of Law Enforcement/Federal Air Marshals Service (OLE/FAMS) field office where the course will be taken. Upon attending class, crew members are asked to show ID to verify their identity against registration records and to sign the class attendance roster. TSA also asks trainees to complete a voluntary TSA training evaluation form. Trainees are not required to identify themselves on the evaluation form.

TSA is revising this information collection to no longer include the collection of the last four digits of the SSN from crew members. TSA is also revising this information collection to include an electronic Injury Waiver Form. Each crew member will be asked to complete an Injury Waiver Form during the registration process, or before the training is conducted. The Injury Waiver Form requests the employee's airline, airline ID number, signature, and date, and is intended to limit any liability to TSA or its facilities should a crew member become injured during the training. Further, TSA is revising the information collection to update the attendance roster to add a ''training complete'' column. Finally, TSA is revising the information collection to replace the evaluation form with an electronic feedback tab. At the completion of the course, participants may assess the quality of the training off-site, on their own time, by clicking on the electronic feedback link, located on the registration site, to provide their anonymous and voluntary comments. This revision is necessary so that TSA may continue to provide the program to eligible participants as well as assess training quality.

The estimated number of annual respondents is 3,400 and estimated annual burden is 595 hours. TSA plans to graduate at least 1,700 crew members during each year of the program, an increase of 700 from the 2015 ICR submission. TSA estimates, the online registration requires five (5) minutes and the injury waiver and class roster sign-in process requires one (1) minute per crew member. This amounts to 311.67 hours [(3,400 crew members × 5 minutes) + (1,700 crew members × 1 minute)]. Although utilizing the course Feedback tab is strictly voluntary, TSA estimates ten (10) minutes per crew member for those who complete the evaluation. Assuming everyone participates, this amounts to a total of 283.33 hours (1,700 crew members × 10 minutes). TSA estimates the total annual hours for this information collection to be 595 hours (311.67 + 283.33).

Dated: December 6, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017–26702 Filed 12–11–17; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6046–N–01]

Family Self-Sufficiency Performance Measurement System (''Composite Score'')

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Proposed New Performance Measurement System (''Composite Score'') for the Family Self-Sufficiency Program.

SUMMARY: This Notice describes and requests comment on a performance measurement system that HUD plans to implement for Public Housing Agencies (PHAs) that receive HUD Family Self-Sufficiency (FSS) program coordinator grants. The Notice also requests comment on whether and, if so, how to develop a performance measurement system for FSS programs that do not receive HUD FSS coordinator funding. The desired effect of this notice is to notify and solicit comments from public housing agencies regarding new proposed criteria for evaluating FSS programs.

DATES: *Comment Due Date:* January 26, 2018.

ADDRESSES: HUD invites interested persons to submit comments regarding the proposed FSS Performance Measurement System to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to *FSS@hud.gov* or by contacting Anice Chenault at 502–618–8163 (email strongly preferred)

Electronic Data Availability. This **Federal Register** notice and a spreadsheet containing scores using the proposed methodology for FSS programs funded in any of the last three years will be available electronically from the HUD FSS Web page *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss.* **Federal Register** notices also are available electronically at *https://www.federalregister.gov/,* the U.S. Government Printing Office website.

SUPPLEMENTARY INFORMATION: This Notice sets forth a new performance measurement system for evaluating the efficacy of FSS programs, requests comment on that performance measurement system, and asks additional questions regarding these proposed changes.

I. Why has HUD developed the FSS performance measurement system?

In pursuit of advancing HUD's ability to evaluate the effectiveness of the FSS program, per statutory mandate (Section 23(i)(2) of the Housing Act of 1937), HUD has developed a new FSS performance measurement system to provide HUD, Congress, and public housing agencies (PHAs) with information on the performance of individual FSS programs. The information will help PHAs determine the extent to which PHAs are administering effective and impactful FSS programs that help participants to successfully graduate from the program and make progress toward economic security. The information will also help HUD understand the extent to which individual FSS program performance, and the performance of all FSS programs receiving HUD FSS coordinator funding as a group, improves or declines over time.

HUD plans to use the performance measures to identify high performing and troubled FSS programs. In the future, HUD will likely consider the FSS performance score of an FSS program in determining FSS funding awards. HUD may also use the rating system to identify PHAs that could benefit from technical assistance to improve their programs. At this time, HUD does not envision using this performance measurement system for tribes/TDHEs, who do not report into Public and Indian Housing Information Center (PIC), or for PHAs with a Moving to Work (MTW) designation, as they report differently into PIC, using Form HUD–50058–MTW. However, HUD is presently exploring a change to the reporting processes for MTW agencies in order to include them in the FSS performance scoring process.

II. What measures will HUD use to evaluate the performance of FSS programs receiving FSS funding?

HUD developed the approach described in this Notice based in part on feedback received on an earlier performance measurement approach proposed in the FY 2014 FSS Notice of Funding Availability (NOFA). In the FY 2014 NOFA, HUD proposed evaluating FSS programs based on the share of FSS participants that experience an increase in earned income (also known as ''earnings growth'') over a specified time period. Among other feedback, commentators expressed concern that this approach did not adequately account for differences in local economic conditions and differences in the approach of local FSS programs.

While some FSS programs encourage participants to increase their earnings immediately, others encourage FSS participants to build skills and credentials first and then seek higher paying jobs. The new FSS performance measurement system addresses these issues, as well as many others, allowing for a more nuanced evaluation of the performance of local FSS programs.

Under the planned performance measurement system, at least once per year, HUD will analyze data collected through the PIC to calculate FSS performance scores for each FSS program for which sufficient data are available to calculate the score. A PHA's FSS performance score will be calculated based on three measures, weighted as follows:

A. Earnings Performance Measure (50 percent)
B. Graduation Rate (30 percent)
C. Participation Rate (20 percent)

HUD has selected these measures because they are important indicators of program performance and are verifiable using the data HUD collects through the PIC data system. No outside or additional reporting will be required, ensuring the system does not increase the reporting burden of PHAs. No new Paperwork Reduction Act (PRA) Information Collection will be required for the scoring, as proposed.

As described below, the Earnings Performance Measure represents the difference between the earnings growth of FSS participants and the earnings growth of other similar households within the PHA within a specified time frame. This approach helps to control for variations in local economic conditions. Earnings growth is one of the primary outcomes desired from FSS; the FSS performance score therefore assigns the Earnings Performance Measure a high weight. HUD has assigned the next highest weight to the Graduation Rate indicator—which represents the rate of FSS participants who successfully ''graduate'' from the program—to encourage PHAs to work closely with individual FSS participants to increase graduation rates. (To graduate from FSS, a participant must be employed, be independent of welfare assistance for at least one year, and achieve the other goals set forth in the participant's contract of participation.) Finally, the FSS performance score looks at Participation Rate, which reflects the extent to which a PHA exceeds the minimum number of households that HUD requires the PHA to serve as a condition of receiving an FSS grant. PHAs with higher Participation Rates are serving more households than required, which is a desired output, provided the PHAs are serving those households effectively. Because the Earnings Performance Measure is weighted more heavily than the Participation Rate, however, PHAs should be careful not to execute more Contracts of Participation than they can serve effectively, because doing so would likely reduce their scores on the Earnings Performance Measure.

Together, the Earnings Performance Measure, Graduation Rate, and Participation Rate provide a balanced measurement of the performance of an individual FSS program. The three measures are calculated as follows:

A. Earnings Performance Measure Calculation

The Earnings Performance Measure gauges the extent to which the earnings [1] of FSS participants increase over time after joining the FSS program. In developing the methodology for this measure, HUD has been sensitive to the fact that some FSS programs encourage FSS participants to immediately increase their earnings while others encourage FSS participants to first build human capital through education and training in order to qualify for higher paying jobs. The methodology is also sensitive to the fact that the earnings of low-income workers are often volatile, and that the economic conditions in which different FSS programs are operating vary from community to community.

To accommodate these different factors and control for variations among FSS programs, HUD calculates the Earnings Performance Measure for each FSS program using the process outlined below. HUD applies this process to the population of FSS participants who enrolled in the FSS program 3.5 to 7.5 years prior to the end of the most recent quarter of data available through PIC to calculate the latest FSS performance scores.

Controlling for Variations in the Composition of Local FSS Programs: While households with elderly heads or heads who are a person with disabilities may participate in FSS, such households are not included in the calculation of a PHA's earnings performance measure. This ensures that PHAs that serve larger shares of such households are not disadvantaged in the performance measurement process as compared to PHAs that serve smaller shares of such households.

Controlling for FSS Program Model and Earnings Fluctuations: To calculate an Earnings Performance Measure for a PHA, HUD first measures the growth in annual household earnings of each household enrolled in FSS at the PHA in two ways and selects the higher of the two measures for each household:

1. *Earnings Growth Since Enrollment:* The difference between (i) annual earnings upon enrollment in FSS and (ii) the most recent earnings estimate available in PIC for that household from an annual reexamination.

2. *Average Annual Earnings While in FSS:* The difference between (i) earnings upon enrollment in FSS and (ii) the household's average annual earnings during the time period between enrollment in FSS and the most recent annual reexamination of income available in PIC.

Controlling for FSS Program Model and Earnings Fluctuations: HUD selects the higher of the two measures for each household in order to accommodate different approaches to implementing FSS while also correcting for variations in year-to-year earnings, which can be volatile for low-income households. Some PHAs encourage FSS participants to focus immediately on increasing their earnings, while others encourage FSS participants to focus on obtaining education and building skills first and then seek a higher paying job once they have stronger credentials. Other agencies use both approaches, tailoring the approach to each individual. Measure 1, Earnings Growth Since Enrollment, accommodates programs that encourage participants to focus first on education and training, while both measures work acceptably for programs that encourage individuals to increase their earnings immediately. Measure 2, Average Annual Earnings While in FSS, focuses on the difference between starting and average annual earnings, which ensures that an FSS participant who has made good progress in increasing earnings while in FSS, but who nevertheless has experienced a temporary setback of job loss as of the most recent annual reexamination, nevertheless has his or her progress recognized. For each household, the Earnings Performance Measure focuses on the higher of the two measures, maximizing HUD's ability to recognize households' progress toward increased earnings while participating in FSS.

Controlling for Local Economic Conditions: Because economic conditions vary from one community to the next, HUD has built in a mechanism to control for these differences. HUD

[1] For the purposes of the FSS program and these FSS measures, earnings are defined as annual earnings from all wage sources, as recorded on the HUD–50058 form. These include the following form 50058 income codes: B—Own Business, F—Federal Wages, HA—PHA Wage, M—Military Wage or W—Other Wage.

adjusts for local economic conditions by comparing the average earnings growth of FSS participants at a PHA to the average earnings growth for nonparticipants with similar characteristics at the same PHA. The difference in performance between the two groups represents the Earnings Performance Measure for that PHA. Since the earnings of non-FSS participants would be expected to grow faster at PHAs located in stronger job markets than in PHAs located in weaker job markets, this comparison helps to account for differences in local economic conditions, which facilitates a meaningful comparison of earnings growth across FSS programs. Specifically, to calculate an Earnings Performance Measure for each PHA, HUD:

- Selects three comparison households for each FSS household based on the extent to which the comparison households are similar to the FSS household on the following characteristics: Earnings as of the time of the FSS household's entry into FSS, age of head of household, length of time in the voucher or public housing program, number of adults in the household and number of children under age 5.
- Calculates the earnings growth for all of the comparison households using the same approach used to calculate the earnings growth for FSS households, with the FSS household's enrollment date being applied to its comparison households for purposes of calculating the comparison households' initial earnings.
- Calculates the difference between the average earnings growth for all FSS participants and the average earnings growth for all comparison households at each PHA. The difference between the two represents the PHA's earnings performance measure.

HUD applies this measure to all FSS participants with a head of household who is neither elderly nor a person with disabilities who joined FSS between 3.5 and 7.5 years prior to the end of the quarter of the PIC extract used to calculate the score. For example, if the most recent PIC data extract ended in March 31, 2017, HUD's calculation of earnings performance measures would focus on FSS participants who joined the FSS program between October 1, 2009 and September 30, 2013. This methodology aggregates information for four years of FSS entrants in order to generate a large enough sample to analyze. The methodology does not examine data for participants that have entered the FSS program more recently than 3.5 years ago to allow sufficient time to have passed for FSS participants to have benefitted from the program. At the same time, the methodology does not focus only on an older sample of FSS participants to ensure that the results reflect recent FSS program performance to the maximum extent practicable.

Technical note: In measuring earnings growth, the methodology focuses solely on earnings determined through annual reexaminations, disregarding the results of any interim reexaminations. The reason for doing this is that not all PHAs require interim reexaminations of income when earnings rise in between annual reexaminations. To ensure an apples-to-apples comparison of earnings growth across PHAs, HUD focuses only on annual reexaminations. An annual progress report is required for every FSS participant regardless of the spacing of rental re-examinations, so PHAs involved in rent reform demonstrations would be included in this scoring.

B. Graduation Rate Calculation

This measure examines the share of FSS participants at each PHA who have ''graduated'' from the FSS program. It is calculated based on the graduation rate of FSS participants who entered each PHA's FSS program 5 to 8 years before the end of the most recent quarter of available PIC data. The methodology focuses on these households to allow sufficient time for most of the FSS participants who will graduate to have done so. HUD considered focusing on an older cohort to capture 100 percent of the FSS participants who will graduate, but HUD determined that it was more advantageous for the period analyzed to include more recent performance by the PHA.

Controlling for Turnover Rates: Turnover rates at PHAs can vary significantly for reasons unrelated to FSS. To avoid penalizing programs with higher turnover, HUD excludes non-graduating FSS participants who exited the Housing Choice Voucher (HCV) or Public Housing programs before the end of the analysis period from both the numerator and the denominator in calculating the Graduation Rate.

C. Participation Rate Calculation

The Participation Rate is the ratio of the number of FSS participants being served to the minimum number expected to be served under the standards used for awarding funding under the FSS NOFA. Agencies that exactly meet the standard will have a ratio of 1.0. Agencies that serve more than the required number will have a ratio above 1.0. Agencies that serve fewer than the required number will have a ratio below 1.0.

To calculate the Participation Rate, HUD first calculates the minimum number of FSS participants that HUD expects each PHA to serve for each of the most recent three (3) fiscal years for which both funding award and number served data are available. HUD calculates this number based on the guidelines in the NOFA and the number of coordinators funded in each agency during each year. HUD then sums the number of FSS participants actually served in each of the three years based on PIC data. Finally, HUD divides the total number of FSS participants served in each PHA by the total minimum number expected for the PHA's HUD-funded coordinator positions to determine the participation rate. If funding is only awarded to the PHA in one or two of the three years, the measure only uses data for the years for which funding was awarded. Note that this metric, while similar, is different from the ''number of participants served,'' which has been used in NOFA competitions and assesses only the most recent period of performance.

Controlling for Annual Variation and PIC Reporting: HUD also separately calculates the Participation Rate for the most recent year and then grades a PHA's Participation Rate based on the higher of: (a) The PHA's three-year average and (b) the most recent year. Looking at the higher of the these two values allows HUD to use the most recent available data for PHAs that have made progress in increasing the number served while avoiding penalizing PHAs for the results of an atypical year. It also ensures that PHAs that have improved the quality of their PIC reporting on FSS participation can be judged based on the FSS participant counts derived from recent PIC reports, rather than from reports submitted in earlier years. Given the new guidance that HUD issued on PIC reporting for FSS on May 16, 2016 (PIH Notice 2016–08), HUD expects the quality of FSS reporting to PIC to be improved going forward and reminds PHAs of the importance of ensuring accurate and timely submissions of FSS Addendums to PIC.

As calculated using the procedures described above, the participation rate is higher if the PHA has served more participants relative to its funding level. The ratio required in the NOFA is 25 for one full-time coordinator and 50 for each additional full-time coordinator. For example, a PHA with 1 funded full-time coordinator is expected to serve at least 25 participants during the year, while a PHA with 3 funded full-time coordinators is expected to serve at least

125 participants. If the PHA with 1 coordinator serves 40 FSS participants (much more than the minimum required) and the PHA with 3 coordinators serves 130 participants (only slightly more than the minimum expected), the PHA with the smaller number of coordinators and participants will have a higher participation rate (40/25 = 1.60 versus 130/125 = 1.04).

PHAs that receive funding jointly with other PHAs are evaluated together in calculating the participation rate. HUD sums the number of FSS participants served by each of the jointly-funded agencies and the minimum number of participants the agencies are jointly expected to serve and provides the same participation score for each of the PHAs.

III. How will HUD convert the measures into an FSS Performance Score?

After making the calculations described above, HUD will develop an FSS Performance Score for each PHA using a two-step process.

A. Step One: Assigning Scores to Each of the Three Measures

In Step One, HUD will assign a score of 0 to 10 to each PHA's FSS program for each of the three measures. Scores will be assigned using the procedures described below. The ranges for awarding points between two values include those values as well as all intermediary values.

For each of the three measures, HUD has selected criteria for evaluating PHA performance. For each measure, the highest performers are assigned a score of 10, the next-highest performers are assigned a score of 7.5, and low performers are assigned a score of 0. HUD will award a score of 5 to PHAs whose performance does not satisfy the criteria for highest, next-highest, or low performance for that measure.

1. Earnings Performance Measure (50 Percent of Final Score)

- *10 points:* Earnings performance measure of $6,400 or higher.
- *7.5 points:* Earnings performance measure between $4,750 and $6,399.
- *0 points:* Earnings performance measure below $1,500 and a p-value of .10 on a statistical test measuring the likelihood that a PHA's earnings performance measure is significantly lower than the median measure of $3,418 (see below for an explanation of this statistical test).
- *5 points:* All PHAs that do not qualify for a 10, 7.5, or a 0.

As described above, a PHA's earnings performance measure represents the difference between: (a) The average earnings growth for FSS participants and (b) the average earnings growth for comparison households at the same PHA. A PHA's earnings performance measure is not simply a measure of the extent to which FSS participants increased their earnings. Instead, a PHA's earnings performance measure reflects the relative growth of FSS participants relative to a matched set of non-participants at that PHA. HUD assigns a higher score to FSS programs that achieve a higher earnings performance score.

In addition to focusing on the size of the earnings performance measure, the scoring for this measure applies a one-tailed test of statistical significance, designed to protect FSS programs from being scored ''low performer'' due to random variation and low sample size. For example, without this protection, an individual FSS program may include several anomalous participants or control households that skew research results. The statistical test measures the likelihood that a PHA's earnings performance measure is significantly lower than the median measure. The lower the p-value, the less likely it is that a PHA received a below-median earnings performance measure due to random variation. To receive 0 points, a PHA must not only have an earnings performance measure below $1,500 but also a p-value on this test of less than .10, which means there is at least a 90 percent probability that the earnings performance measure is truly below the median value of $3,418.

While a similar statistical test could theoretically be applied to help identify high performing programs, such a test would make it harder for small FSS programs to qualify. To avoid disadvantaging smaller FSS programs, p-values are not considered in determining whether to award 10 or 7.5 points.

2. Graduation Rate (30 Percent of Final Score)

- *10 points:* Graduation rate of 38 percent or higher.
- *7.5 points:* Graduation rate between 27 percent and 37.99 percent.
- *0 points:* Graduation rate of 8 percent or lower.
- *5 points:* All PHAs that do not qualify for a 10, 7.5, or a 0.

Under this approach, a higher graduation rate results in a higher score.

3. Participation Rate (20 Percent of Final Score)

- *10 points:* Participation rate of 2.1 or higher.
- *7.5 points:* Participation rate between 1.7 and 2.09.
- *0 points:* Participation rate of 0.95 or lower.
- *5 points:* All PHAs that do not qualify for a 10, 7.5, or a 0.

Under this approach, a higher participation rate results in a higher score.

Step Two: Developing the Final FSS Performance Score and Grade

After computing individual scores for each of the three measures, HUD aggregates each PHA's scores using the weights noted above to develop a final FSS Performance Score from 0 to 10. Based on this score, HUD assigns the following ranking to the PHA's performance:

- *Excellent:* FSS Performance score of 7.25 or higher.
- *Standard:* FSS Performance score between 4.0 and 7.24.
- *Low:* FSS Performance score between 3.00 and 3.99.
- *Troubled:* FSS Performance score of less than 3.00.

IV. How were these thresholds selected?

The thresholds for converting the three performance measures into scores in step one are fixed and will now apply to all future years until HUD revises the methodology. These thresholds were selected by applying the FSS Performance Score methodology to PIC data from the quarter ending December 31, 2016. The thresholds were selected as follows:

1. Earnings Performance Measure (50 Percent of Final Score)

- The threshold for awarding a score of 10 points (an earnings performance measure of $6,400) represents approximately the 80th percentile of the distribution of results of the earnings performance measure for PHAs whose measures have a p value >.10 on a statistical test measuring the likelihood that the earnings performance measure is different from $0. HUD calculated the distribution using agencies that receive a p value below .10 on this test to reduce the likelihood that the results would be affected by random variation.
- The threshold for awarding a score of 7.5 points ($4,750) represents approximately the 60th percentile of the distribution of results of the earnings performance measure for PHAs whose measures have a p value <.10 on the statistical test described above.
- The threshold for awarding a score of 0 points ($1,500) represents approximately the 20th percentile of the distribution of results of the earnings performance measure for all PHAs.

2. Graduation Rate (30 Percent of Final Score)

- The threshold for awarding a score of 10 points represents approximately the 80th percentile of the distribution of graduation rates.
- The threshold for awarding a score of 7.5 points represents approximately the 60th percentile of the distribution of graduation rates.
- The threshold for awarding a score of 0 points represents approximately the 20th percentile of the distribution of graduation rates.

3. Participation Rate (20 Percent of Final Score)

- The threshold for awarding a score of 10 points represents approximately the 80th percentile of the distribution of participation rates.
- The threshold for awarding a score of 7.5 points represents approximately the 60th percentile of the distribution of participation rates.
- The threshold for awarding a score of 0 points is 0.95, which falls below the minimum standard established by HUD. A PHA serving the minimum number of FSS participants required to obtain FSS funding would normally have a participation rate of 1.0. However, this methodology uses a score of 0.95 to give PHAs the benefit of the doubt and account for any temporary vacancies in the FSS program.

4. Composite FSS Performance Scores and Grades

- The threshold for awarding a ranking of Excellent represents approximately the 80th percentile of the distribution of FSS Performance Scores.
- The range for awarding a ranking of Low represents approximately the 10th through the 20th percentiles in the distribution of FSS Performance Scores.
- Programs falling below approximately the 10th percentile in the distribution of FSS Performance Scores are classified as Troubled.
- All other FSS programs are classified as ''Standard'' performers. The range for awarding a ranking of Standard represents approximately the 20th through the 80th percentiles of the distribution of FSS Performance Scores.

As noted above, all thresholds are now fixed and will not be recalculated each year. This will facilitate tracking individual PHA progress as well as that of all FSS programs over time. Further, this framework does not limit how many programs can receive any particular ranking. The thresholds are absolute, not relative.

V. What else do PHAs need to know about the FSS performance score methodology?

The following is additional information about how HUD calculates FSS performance scores:

1. For households entering FSS more than one time during the analysis period, the methodology focuses only on the FSS Contract of Participation that began 5 to 8 years before the end of the most recent quarter of available PIC data to calculate the FSS performance score. This facilitates appropriate evaluation of each program's graduation rate, which focuses on the same group of households. If a participant entered more than once during that period, the methodology focuses on the older entry.

2. FSS performance scores are calculated for any PHA that has sufficient data in PIC to calculate at least one of the three measures used to calculate the score. If there are insufficient data to calculate one or two of the measures, that PHA will receive a middle (standard) score of ''5'' for the missing measure(s) before calculating the FSS performance score.

3. A PHA for which none of the three scores are available will not receive a score.

4. Because the earnings performance measure and the graduation rate are calculated using data that spans a range of years, it will take time for a PHA to improve its FSS Performance Score through improvements in earnings and graduation outcomes. However, improvements in these areas will eventually become apparent in a PHA's FSS Performance Score. It is important for PHAs with low scores to begin implementing improvements as quickly as possible. PHAs with participation rates below 0.95 can quickly improve their FSS Performance Scores by increasing participation rates to meet HUD's minimum requirements.

VI. How will HUD assess the performance of FSS programs that do not receive funding?

HUD is interested in evaluating the performance of all FSS programs administered by PHAs, including programs that do not receive funding from HUD. However, there are several concerns with applying the methodology described above to the evaluation of the performance of non-funded agencies. First, the participation rate cannot be calculated using the methodology described in this notice because there are no set expectations for program size. Second, such programs tend to be smaller than NOFA-funded programs, which means their results are more subject to random variation due to the participation of individuals with idiosyncratic features. Third, these program participants tend to receive less personal attention from FSS coordinators due to the lack of dedicated funding from HUD for FSS.

HUD will continue studying options for measuring the performance of such agencies to determine if an approach can be developed for evaluating the quality of their FSS programs. To inform HUD's analysis of this issue, HUD requests comments on the following questions:

1. Should HUD evaluate FSS programs that do not receive funding from HUD?

2. Should the performance of an unfunded FSS program be considered by HUD in determining whether to award funding? If not, what factors should be used in determining whether to award funding to a currently unfunded agency?

3. Should the FSS performance score of an unfunded PHA be compared solely with that of other unfunded PHAs or also against the performance of funded agencies?

4. How should the procedures for evaluating the performance of funded FSS programs be adapted for purposes of measuring the performance of FSS programs that do not receive funding?

5. Should HUD calculate a participation rate for unfunded FSS programs in evaluating their performance and if so, how should it be calculated?

6. In addition to, or instead of a participation rate, should HUD limit the evaluation of non-funded agencies to FSS programs over a certain size, such as 15 or 25 participants? Focusing only on FSS programs of a certain minimum size should help to improve the reliability of the evaluation results while also focusing the evaluation (and any corresponding preference for funding) on PHAs that demonstrate a threshold level of commitment to the FSS program.

VII. Other Questions

In addition to the questions noted above, HUD requests feedback on the following questions:

1. Has HUD assigned the appropriate weight to each of the three measures? The proposed system uses the following weights: Earnings performance measure (50 percent); Graduation rate (30 percent); and Participation rate (20 percent).

2. In evaluating earnings growth, HUD focuses on the average of the earnings growth of individual households at a PHA, rather than median growth. HUD

takes this approach to recognize the potential life-changing impacts of helping individuals move from unemployment to high-paying jobs. Such impacts are captured in looking at average earnings growth, but might be missed in looking only at the median growth. It is appropriate in this context to use averages, or should HUD switch to medians instead?

3. Has HUD adequately accounted for variations in local economic conditions? If not, what further adjustments should be made? The earnings performance measure accounts for local economic conditions by comparing the earnings growth for FSS participants at a PHA to the earnings growth for non-FSS participants at the same PHA with similar characteristics. The assumption underlying this approach is that earnings growth for non-FSS participants will be higher in areas with stronger job markets than in areas with weaker job markets. To attain the same earnings performance measure, a PHA in an area with a strong job market would thus need to demonstrate a higher level of earnings growth among FSS participants than would a PHA in an area with a weaker job market. After calculating the difference between earnings growth for FSS and non-FSS participants at a PHA, the proposed system makes no further adjustments. Should HUD further adjust its system to account for variations in local economic conditions, and if so, how should HUD make this adjustment? For example, HUD could divide the earnings performance measure by the average starting earnings for a PHA's FSS participants and then compare the resulting percentages across PHAs. Further, HUD could adjust the earnings performance measures by an index that accounts for local economic conditions.

4. HUD currently allows a PHA to count FSS participants living in multifamily FSS programs toward the minimum number of participants required to be served in order to qualify for FSS funding. The PIC data system, however, does not capture information on multifamily FSS participants. HUD requests suggestions on how best to capture information on multifamily FSS participants being served by a PHA's FSS coordinator to determine a PHA's participation rate.

5. HUD currently permits, and funds, FSS programs in Tribes and Tribally Designated Housing Entities (TDHEs). However, Tribes and TDHEs do not report into the PIC data system. HUD requests suggestions on how to best capture information on tribal FSS participants to determine a score.

6. HUD currently permits, and funds, FSS programs at MTW agencies. However, MTW agencies are only required to report select FSS data fields into the PIC system. HUD requests suggestions on how to best capture information on MTW FSS participants to determine a score.

7. How should HUD evaluate FSS programs offered by HUD-assisted multifamily properties with Section 8 contracts? These programs are very new and currently submit quarterly spreadsheets rather than an FSS addendum integrated into a HUD data reporting system.

VIII. Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: December 5, 2017.

Dominique Blom,

General Deputy Assistant Secretary, Office of Public and Indian Housing.

[FR Doc. 2017–26696 Filed 12–11–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6070–N–01]

Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations; Solicitation of Comment

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice; solicitation of comment.

SUMMARY: On August 10, 2017, pursuant to the authority provided in regulation, HUD suspended for two years the designation for the mandatory use of Small Area Fair Market Rents (Small Area FMRs) for certain metropolitan areas that had previously been designated for Small Area FMR use (Suspension). After HUD provided notice of this suspension, interested persons requested an opportunity to review and comment on the Suspension. While HUD is not required to post the Suspension for public comment, this notice solicits comment for a period of 30 days. At the expiration of the 30-day period, HUD will review the comments and consider if any further changes to the Suspension are necessary.

DATES: Comment Due Date: January 11, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this notice, and HUD's temporary suspension of the use of Small Area FMRs, to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with

speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Todd M. Richardson, Deputy Assistant Secretary, Office of Policy Development, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20410, 202–708–1537, ext. 5706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Since October 2011, all Public Housing Agencies (PHAs) operating the Housing Choice Voucher (HCV) program in the Dallas, TX HUD Metro FMR Area have been using Small Area Fair Market Rents (Small Area FMRs). The use of Small Area FMRs was intended to give HCV families access to areas of high opportunity and lower poverty by providing a subsidy that is adequate to cover rents in those areas, thereby reducing the number of voucher families that reside in areas of high poverty concentration. The PHAs in Dallas began using Small Area FMRs as the result of a legal settlement.

HUD announced the commencement of the Small Area FMR demonstration in November 2012. Five PHAs participated voluntarily in this demonstration, which sought to assess the effect on families of using FMRs published at the U.S. Postal Service ZIP code level (*i.e.,* Small Area FMRs) in lieu of FMRs published at the metropolitan area level.[1]

In 2015, HUD awarded a cooperative agreement to Abt Associates to evaluate the use of Small Area FMRs by the five PHAs that voluntarily participated in the demonstration, as well as two PHAs operating the voucher program in the Dallas, TX HUD Metro FMR Area. Abt was charged with examining whether and to what extent providing higher subsidies in ZIP code areas where rents are higher, and lower subsidies in ZIP code areas where rents are lower, helps HCV families to better access areas of opportunity. HUD also requested that the evaluation examine how the transition from metropolitan-wide to Small Area FMRs affected families and landlords, and the impact of Small Area FMRs on HCV subsidy and administrative costs.

On November 16, 2016, HUD published its ''Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMR'' final rule (81 FR 80567). This final rule required the use of Small Area FMRs in certain metropolitan areas instead of the 50th percentile rent previously used. On the same day, HUD published a notice listing areas in which the use of Small Area FMRs is mandatory beginning on October 1, 2017 (81 FR 80678).

On April 26, 2017, HUD received Abt's Small Area Fair Market Rent Demonstration Evaluation Interim Report.[2] The Interim Report examines changes in outcomes from 2010 to 2015 and documents several findings that HUD finds concerning. In addition, it indicates that further research is needed to address several critical questions with respect to the potential harm to HCV families (both participants and applicants) and PHAs in areas transitioning to Small Area FMRs.

On August 10, 2017, pursuant to the authority provided in regulation, HUD suspended the designation for the mandatory use of Small Area FMRs for 23 of the 24 metropolitan areas that would become subject to the requirement on October 1, 2017 (Suspension).[3] The Suspension was made pursuant to 24 CFR 888.113(c)(4), which provides that HUD may suspend the Small Area FMR designation for a metropolitan area when HUD by notice makes a documented determination that such action is warranted. Specifically, § 888.113(c)(4) provides:

> HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, such designations will be permanent, and [HUD] will make new area designations thereafter as new data becomes available. HUD may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of the Small Area FMRs, when HUD by notice makes a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs are:
>
> i. A Presidentially declared disaster area that results in the loss of a substantial number of housing units;
>
> ii. A sudden influx of displaced households needing permanent housing; or
>
> iii. *Other events as determined by the Secretary* (emphasis added).

Based on the findings in Abt's Small Area Fair Market Rent Demonstration Evaluation Interim Report, summarized above, HUD has concerns that the mandatory use of Small Area FMRs, without sufficient preparation and mitigation of potential unintended consequences, could put some PHAs at risk of causing an adverse rental housing market condition. Accordingly, after careful consideration, HUD issued the Suspension of the Small Area FMR designation for 23 of the 24 metropolitan areas that had previously been designated for mandatory Small Area FMR use. The Suspension was for two Federal fiscal years (FYs), becoming effective at the beginning of FY 2020 (October 1, 2019) instead of FY 2018. To provide notice to affected PHAs, HUD sent letters to more than 200 PHAs in the 23 metropolitan areas noted in the Suspension. Additionally, HUD posted an article regarding the Suspension on its website.[4]

The delayed implementation of mandatory Small Area FMR adoption will provide HUD with reasonable time to analyze the final findings of the demonstration and determine what measures are necessary to mitigate negative effects, if possible. For example, the delay may allow HUD to develop guidance and technical assistance that is informed by the lessons learned from the demonstration.

Notwithstanding the exercise of this authority, the Small Area FMR Rule permits any PHA that voluntarily seeks to adopt SAFMRs to do so. The program regulations at 24 CFR 888.113(c)(3) provide that a PHA administering an HCV program in a metropolitan area not subject to the mandatory application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD's Office of Public and Indian Housing (PIH) through written request to PIH. In light of the findings of Abt's Small Area Fair Market Rent Demonstration Evaluation Interim Report referenced above, should HUD receive a request under this provision, HUD will consider in its approval determination a PHA's ability to provide reasonable assurance that adoption of Small Area FMRs will not result in an adverse housing market condition.

With this notice, HUD seeks public comment on the Suspension. While

[1] Four of the five demonstration PHAs requested and were permitted by HUD to continue using Small Area FMRs in the operation of their HCV programs after the demonstration ended.

[2] The Small Area Fair Market Rent Demonstration Evaluation Interim Report may be found at *https://www.huduser.gov/portal/sites/default/files/pdf/SAFMR-Interim-Report.pdf.*

[3] The Small Area FMR designation remains in effect for the Dallas-Plano-Irving, TX Metro Division (also referred to as the Dallas, TX HUD Metro FMR Area). All PHAs administering the HCV program in the Dallas-Plano-Irving, TX Metro Division have been using Small Area FMRs since 2011 as a result of a legal settlement.

[4] *See* HUD, *Giving Public Housing Agencies More Time to Succeed,* PD&R Edge, *https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-082817.html.*

HUD is not required to post the Suspension for public comment, this notice solicits comment for a period of 30 days. At the expiration of the 30-day period, HUD will review the comments and consider if any further changes to the Suspension are necessary. Interested parties can find the Suspension in the Supporting Documents section of the docket associated with this notice, at *www.regulations.gov,* and on HUD's website at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

Dated: December 1, 2017.

Dominique Blom,

General Deputy Assistant Secretary, Office of Public and Indian Housing.

[FR Doc. 2017–26695 Filed 12–11–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 6069–N–01]

Advanced Notice of EnVision Center Demonstration

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD solicits comment on a demonstration designed to test the effectiveness of collaborative efforts by government, industry, and nonprofit organizations to accelerate economic mobility of low-income households in communities that include HUD-assisted housing through EnVision Centers, centralized hubs for supportive services focusing on the four pillars of Economic Empowerment, Educational Advancement, Health and Wellness, and Character and Leadership. Approximately 10 communities, selected from across the country, are anticipated to participate in the demonstration. The purpose of the demonstration is to explore the potential of a new service-delivery mechanism to provide HUD-assisted households the ability to benefit from life-changing opportunities that the advancement of the four pillars affords.

DATES: Comment Due Date: February 12, 2018.

ADDRESSES: Interested persons are invited to submit comments responsive to this notice to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. *Submission of Hard Copy Comments.* Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to *http://www.regulations.gov* without change.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m., Eastern Time, weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ariel Pereira, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10282, Washington, DC 20410–7000, telephone number 202–402–5132 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under the leadership of President Donald J. Trump, the Administration is committed to reforming government services and expanding opportunities for more Americans to become self-sufficient. The EnVision Center demonstration focuses on empowering people to leave HUD-assisted housing through self-sufficiency to become responsible homeowners and renters in the private market. By doing so, HUD will be able to make those resources available to others and help more Americans.

The EnVision Centers demonstration is premised on the notion that financial support alone is insufficient to solve the problem of poverty. Intentional and collective efforts across a diverse set of organizations are needed to implement a holistic approach to foster long-lasting self-sufficiency. EnVision Centers will provide communities with a centralized hub for support in the following four pillars: (1) Economic Empowerment, (2) Educational Advancement, (3) Health and Wellness, and (4) Character and Leadership. The Economic Empowerment pillar is designed to improve the economic sustainability of individuals residing in HUD-assisted housing by empowering them with opportunities to improve their economic outlook. The Education pillar seeks to bring educational opportunities directly to HUD-assisted housing and includes partnering with public and private organizations that approach education in non-traditional ways on non-traditional platforms. The Health and Wellness pillar is designed to improve access to health outcomes by individuals and families living in HUD-assisted housing. The Character and Leadership pillar is designed to enable all individuals and families residing in HUD-assisted housing, especially young people, to reach their full potential as productive, caring, responsible citizens by encouraging participation in volunteer and mentoring opportunities.

Through results-driven partnerships with federal agencies, state and local governments, non-profits, faith-based organizations, corporations, public housing authorities (PHAs), tribal designated housing entities (TDHEs) and housing finance agencies, EnVision Centers will leverage public and private

resources for the benefit of individuals and families living in HUD-assisted housing. HUD anticipates that positive outcomes for individuals and households will generate additional positive impacts at the community-wide level. EnVision Centers will also break down the silos of government, and co-locate government services that lead to self-sufficiency.

A January 2011 report from the Government Accountability Office (GAO) that focused on Temporary Assistance for Needy Families, Employment Services and Workforce Investment Act Adult employment programs funded by the U.S. Departments of Labor, Education, and Health and Human Services, found that while it would be a challenge, efficiencies in offering government services could be achieved by co-locating services and consolidating administrative structures.[1] EnVision Centers will bring together in one place, federal, state and local government services, community based organization services, non-profit mission based organization services and faith based organization services that lead economic self-sufficiency and ultimately, greater economic mobility.

II. Demonstration

Every resident living in public or assisted housing should have access to the opportunities economic mobility can provide. This demonstration is designed to encourage and create a platform for communities to collaborate with community supportive service providers, other businesses, foundations, nonprofit organizations, educational leaders, job training and workforce development organizations, and others to advance economic mobility in their communities and to test the effectiveness of a collaborative set of actions that address all barriers to economic sufficiency. The demonstration will build upon existing partnerships and continue collaborative work to improve the lives of residents housed with HUD assistance by providing a forum by which cross-sector organizations can come together to design and implement local interventions to advance economic mobility.

1. Process and Criteria for Participation

HUD's goal is to identify a sample of diverse communities from different geographies and of varying sizes that have the capacity to effectively and expediently implement the demonstration to serve HUD-assisted families. HUD seeks the interest of communities where local leadership has already taken steps to support the goals of the demonstration, as measured by both the community's participation in other complementary Federal initiatives supporting economic mobility, as well as local plans and strategies for addressing the four pillars.

Participation in the demonstration by these communities will build upon existing efforts already underway to expand economic mobility, thereby building the comprehensive and coordinated set of resources that will result in the long-term, sustainable employment that places individuals and families on track to become self-sufficient.

As part of this demonstration, HUD will provide technical assistance, evaluation and monitoring, access to online resources such as the EnVision Center mobile application, access to stakeholder offerings made available to participating communities and a network of support from HUD's departments to ensure that all relevant HUD knowledge resources are made available to participating communities. HUD believes that communities participating in the EnVision Center demonstration will benefit from the collaboration made possible under this demonstration with: Local, state and federal government services, community based organization services, non-profit mission based organization services and faith based organization services that will lead to the development of economic self-sufficiency and ultimately, greater economic mobility for those most in need within these communities.

HUD will use the following criteria to assess communities that have expressed an interest in participating in the demonstration:

(1) The mayor or equivalent executive elected official of the community, and the PHA's or TDHE's executive leader, must formally announce a commitment to enhance economic mobility and in so doing identify skills gaps that exist in their community among distinct neighborhoods and demographics, the resolution of which will support long-term, sustainable employment that places individuals and families in HUD-assisted housing on track to become self-sufficient.

(2) Communities should commit to developing and implementing a plan to promote and expand economic mobility. The development of this plan will serve as a vehicle for bringing various stakeholders together and providing them with a tangible path for achieving the goals of the demonstration. As an example, the plan could specify and formalize the participation of community stakeholders, describe gaps in current service delivery models, identify a physical location(s) which can act as a shared services site to house the EnVision Center, and/or outline specific benchmarks and goals for the EnVision center. Communities' participation plans will be expected to describe the goals of the community's participation in the demonstration and provide, to the extent possible, objective goals regarding the number of partnerships established with state and local government, non-profits, faith based organizations, and private and philanthropic organizations.

(3) To ensure the presence of local support and leverage HUD infrastructure for implementation of this demonstration, communities should be currently participating in one or more Federal place-based initiatives, such as: The Promise Zones program; PHAs participating in the Moving to Work Demonstration, the Byrne Criminal Justice Innovation program; the Strong Cities, Strong Communities program; the JobsPlus program; the Family Self-Sufficiency program and the Resident Opportunities and Self-Sufficiency (ROSS) program; the ConnectHome program; existing Neighborhood Networks sites; existing Family Investment sites; the ROSS for Education Program; the Energy and Economic Development program (SEED); or the Building Neighborhood Capacity program.

(4) Communities should be broadly committed to realizing the Office of American Innovation[2] vision, especially, developing ''workforce of the future'' programs, modernizing government services and information technology, improving services to veterans, creating transformational infrastructure projects, implementing regulatory and process reforms, creating manufacturing jobs, and addressing the drug and opioid epidemic.

(5) As a condition of participation, selected entities are required to cooperate in full with HUD staff and/or any contractors affiliated with HUD, in the implementation and evaluation of this program.

(6) After selection, HUD will finalize a set of measurement tools to evaluate the program's impact and effectiveness. Selected respondents will be required to keep records to document how the Demonstration is being implemented, cooperate with the evaluation, and

[1] *http://www.gao.gov/new.items/d1192.pdf.*

[2] *https://www.whitehouse.gov/the-press-office/2017/03/27/president-donald-j-trump-announces-white-house-office-american.*

cooperate in [any] the formal independent evaluation of the Demonstration.

These criteria are meant to create optimal conditions to accelerate the adoption and use of the EnVision Center model. However, the criteria may be applied with reasonable flexibility to ensure that a diverse set of communities are considered for participation in this demonstration. Approximately 10 communities are anticipated to initially participate in the demonstration. As the demonstration proceeds, HUD will assess expressions of interest from communities and the availability of HUD staffing resources to support additional participation. Additionally, as the demonstration proceeds, HUD will assess the effectiveness of the participation criteria on an ongoing basis. As a result of these assessments, HUD may expand the number of participating communities, revise the participation criteria, or both to reflect HUD's experience in implementing the demonstration.

3. Stakeholder Meetings

In advance of commencement of the demonstration, HUD will sponsor or co-sponsor one or more meetings of communities, cross-sector entities, and other stakeholders to facilitate the sharing of information and identify communities interested in participation in the demonstration. HUD will reach out to communities that have formally declared a commitment to advance economic mobility and otherwise meet the criteria described above to participate in those meetings. HUD also invites interested communities to reach out to HUD to note their interest and request attendance at a stakeholder meeting. HUD therefore encourages interested communities to take the necessary steps to meet the criteria as quickly as possible in order to be best positioned to realize the benefits of these discussions.

HUD may partner with an existing entity that has a national organizational presence sufficient to provide a strong coordinating function across communities, government, and the private and nonprofit sectors. The entity should have significant expertise in community services, economic mobility and the four pillars. It should possess strong existing relationships with industry, foundations, universities, and nonprofit and non-governmental agencies. Finally, it should have community project experience, including educational and outreach activities in underserved populations.

III. Demonstrating Interest in Participating/Information Collection Approval

Communities interested in participating in this demonstration must submit a written commitment by the mayor or equivalent executive elected official of the community (municipality, county, tribal nation or state), and the PHA or TDHE executive leader, to advancing economic mobility and empowering HUD-assisted households to become self-sufficient. This commitment, must also respond to the items outlined in Section II.1. above, as well as identification of the Federal place-based initiatives in which it is involved, as requested by Section II.1.(3.) above. In addition, HUD will require submission of an EnVision Center plan that outlines specific benchmarks and goals for the EnVision Center as outlined in Section II of this notice. Communities seeking to participate in this demonstration must submit this information to *EnVisionCenterDemonstration@hud.gov.*

The information collection requirements contained for the EnVision Center Demonstration will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Information collection	Number of respondents	Frequency of responses	Responses per year	Burden hours per response	Annual burden hours	Hourly costs per response	Annual cost
Commitment Letter	1,650	1	1,650	.25	412.5	$28.85	$11,900.63
Action Plan	1,650	1	1,650	2	3,300	28.85	94,050
Totals	1,650	1	1,650	2.25	3,712.5	.....	105,950.63

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this notice. Comments must refer to the proposal by name and docket number (FR–6069) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947, and, Office of Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 10282, 451 7th Street SW, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

IV. Evaluating the Demonstration

HUD will work with entities across the government and the broader research community to rigorously measure outcomes associated with the

efforts resulting from this demonstration to advance economic mobility. With this research, HUD intends to improve and build on the demonstration, with the goal of extending the demonstration on a nationwide basis. The participating communities and cross-sector entities are expected to participate in any HUD-sponsored evaluation and other efforts designed to identify and share best practices from the demonstration with other HUD-assisted communities. In addition, participating communities and entities will be required to collaboratively develop and subsequently measure and report outputs and outcomes.

V. Solicitation of Public Comment

In accordance with section 470 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), HUD is seeking comment on the demonstration. Section 470 provides that HUD may not begin a demonstration program not expressly authorized by statute until a description of the demonstration program is published in the **Federal Register** and a 60-day period expires following the date of publication, during which time HUD solicits public comment and considers the comments submitted. The public comment period provided allows HUD the opportunity to consider those comments during the 60-day period, and be in a position to commence implementation of the demonstration following the conclusion of the 60-day period.

While HUD welcomes comments on the entirety of the demonstration, it asks that commenters consider the following specific questions:

(1) In administering and evaluating the demonstration, how should HUD define ''economic mobility''?

(2) How can HUD tailor the Economic Empowerment Pillar of the Demonstration to identify and focus on families and individuals residing in HUD-assisted housing that are able to work, and not those who are elderly or include persons with disabilities;

(3) How can HUD and identified partners (state and local entities, private sector, philanthropic, non-profit and other entities) best maximize existing programs and efforts across agencies in a coordinated and holistic approach?

(4) What impediments exist for achieving the four pillars, including institutional, organizational, legal or statutory, and behavioral impediments? Is it necessary to the success of the demonstration that communities link all four pillars, and if not, would it be sufficient for a community to identify in its participation plan the barriers to including a specific pillar? Are there additional pillars that contribute to self-sufficiency and economic mobility that should be made part of the demonstration?

(5) What incentives and programs have worked in the past to achieve the four pillars?

(6) What elements and level of detail should HUD require in a community's participation plan?

(7) How should HUD define and measure economic mobility over time and space? How should HUD measure quality of life for residents that remain in assisted housing?

(8) What data sources or data linkage is needed to develop outcome metrics such as, return on investment, involvement of local institutions of higher learning, employment and economic opportunities for Section 3 residents and businesses, and a public process for reviewing outcomes and lessons learned?

Dated: December 5, 2017.

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2017–26684 Filed 12–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2017–0057; FXES11130600000–178–FF06E00000]

Endangered and Threatened Wildlife and Plants; Draft Supplement to the Grizzly Bear Recovery Plan: Habitat-Based Recovery Criteria for the Northern Continental Divide Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; request for comments; notice of public workshop.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft Supplement to the Grizzly Bear Recovery Plan: Habitat-Based Recovery Criteria for the Northern Continental Divide Ecosystem (NCDE). The draft supplement, which will be appended to the Grizzly Bear Recovery Plan upon finalization, proposes to establish habitat-based recovery criteria for the NCDE grizzly bear population. In addition, the Service hereby gives notice that a public workshop will be held to review the habitat-based recovery criteria for the grizzly bear in the NCDE. The workshop will allow scientists and the public to submit oral and written comments. The Service solicits review and comment from the public on this draft supplement.

DATES: *Comment submission:* Comments on the draft Supplement to the Grizzly Bear Recovery Plan must be received on or before January 26, 2018.

Public meeting: The public workshop will be held from 1 p.m. to 4 p.m. and 6 p.m. to 8 p.m. on January 3, 2018, at the Double Tree Hotel, 100 Madison Street, in Missoula, Montana.

ADDRESSES: *Document availability:* An electronic copy of the draft Supplement to the Grizzly Bear Recovery Plan is available at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2017–0057, and also at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php.* Hard copies of the draft habitat-based recovery criteria are available by request from the Grizzly Bear Recovery Office, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, MT 59812; telephone 406–243–4903.

Comment submission: Submit comments on the draft Supplement to the Grizzly Bear Recovery Plan via any one of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* In the Search box, enter the docket number for this notice, which is FWS–R6–ES–2017–0057. Then click on the Search button. You may submit a comment by clicking on ''Comment Now!''

(2) *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2017–0057; U.S. Fish and Wildlife Service, MS: BPHC; 5257 Leesburg Pike; Falls Church, VA 22041–3803.

Public meeting: The public workshop will be held on at the Double Tree Hotel, 100 Madison Street, Missoula, Montana 59812.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Office (see **ADDRESSES**), 406–243–4903.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft Supplement to the Grizzly Bear Recovery Plan: Habitat-Based Recovery Criteria for the Northern Continental Divide Ecosystem (NCDE). The draft supplement, which will be appended to the Grizzly Bear Recovery Plan upon finalization, proposes to establish habitat-based recovery criteria for the NCDE grizzly bear population. In addition, the Service hereby gives notice that a public workshop will be held to review the habitat-based recovery criteria for the grizzly bear in the NCDE. The workshop will allow scientists and the public to submit oral and written comments. The Service solicits review

and comment from the public on this draft supplement. In the lower 48 States, grizzly bears (*Ursus arctos horribilis*) are federally listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), outside of the Greater Yellowstone Ecosystem.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria which, when met, may result in a determination that the species no longer needs the protection of the ESA; and provide estimates of the time and cost for implementing the needed recovery measures (16 U.S.C. 1533(f)(1)(B)).

We approved the first Grizzly Bear Recovery Plan for grizzly bears in the lower 48 States on January 29, 1982 (U.S. Fish and Wildlife Service 1982). In 1993, we approved a revision to the Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1993), which included additional tasks and new information that increased the focus and effectiveness of recovery efforts. The 1993 Recovery Plan identifies distinct Recovery Zones and unique recovery criteria for six different grizzly bear populations, including the NCDE, with the intent that these individual populations would be delisted as they each achieve recovery (U.S. Fish and Wildlife Service 1993, pp. ii, 33–34). Supplements to the Recovery Plan were approved in 1997, 1998, 2007, and 2017 (U.S. Fish and Wildlife Service 1997, 1998, 2007a, 2007b, 2017).

Under the ESA, recovery plans must include objective, measurable recovery criteria, including habitat-based recovery standards (16 U.S.C. 1533(f)(1)(B)(ii)). A Grizzly Bear Recovery Plan Task Force also recommended further consideration of this issue, stating that we should work to ''establish a threshold of minimal habitat values to be maintained within each Cumulative Effects Analysis Unit in order to ensure that sufficient habitat is available to support a viable population'' (U.S. Fish and Wildlife Service 1993, p. 76). The draft habitat-based recovery criteria were developed in part by taking into account the oral and written comments received at the habitat-based recovery criteria workshop, which was held on July 7, 2016, in Missoula, Montana (81 FR 29295, May 11, 2016), and during the public comment period that followed the workshop. The Service has decided to hold a second habitat-based recovery criteria workshop.

The ESA requires the Service to provide public notice and opportunity for public review and comment on recovery plans prior to final approval (16 U.S.C. 1533(f)(4)). The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is our policy to request peer review of recovery plans. Comments received at the upcoming workshop announced in this **Federal Register** notice and during the public comment period will be used to inform the final habitat-based recovery criteria, which will be appended to the 1993 Grizzly Bear Recovery Plan for the NCDE and incorporated into the NCDE Grizzly Bear Conservation Strategy. The Recovery Plan sets out guidance for the Service, States, and other partners on methods to minimize threats to grizzly bears and criteria that may be used to measure if recovery has been achieved while the Conservation Strategy guides post-delisting management.

Workshop

As described above, the Service will hold a public workshop seeking input and ideas on objective, measurable habitat-based recovery criteria available at *https://www.fws.gov/mountain-prairie/es/grizzlyBear.php.* We seek ideas and information about characteristics of habitat necessary to support a recovered population of grizzly bears and habitat parameters that can be measured and directly related to grizzly bear population health. The Service also wants to obtain information and comments on methods for monitoring the habitat-based recovery criteria. The workshop will be held in Missoula, Montana, on the date specified in **DATES** at the location specified in **ADDRESSES**. Participants are invited to present information in oral and written form. All comments presented orally should also be submitted in writing to facilitate review of these comments. Those wishing to present information or comments orally at the workshop are asked to contact the Grizzly Bear Recovery Office (see **ADDRESSES**) so that oral presentations can be scheduled in advance.

All information and comments received at the workshop or during the public comment period will be considered in finalizing the habitat-based recovery criteria for the NCDE.

Request for Public Comments

The Service solicits public comments on a draft Supplement to the Grizzly Bear Recovery Plan. Specifically, this supplement proposes to append habitat-based recovery criteria for the Northern Continental Divide Ecosystem to the Grizzly Bear Recovery Plan. All comments received by the date specified in **DATES** will be considered prior to approval of the final Supplement to the Grizzly Bear Recovery Plan. Written comments and materials regarding the plan should be submitted as specified in **ADDRESSES**.

Availability of Public Comments

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Grizzly Bear Recovery Office address specified in **ADDRESSES**.

References Cited

A list of the references cited in this notice may be found at *http://www.regulations.gov* in Docket No. FWS–R6–ES–2017–0057.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 5, 2017.

Noreen E. Walsh,

Regional Director, Mountain-Prairie Region, Denver, Colorado.

[FR Doc. 2017–26257 Filed 12–11–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F 178S180110; S2D2D SS08011000 SX066A00 33F 17XS501520; OMB Control Number 1029–0063]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Fee Collection and Coal Production Reporting and Form OSM–1, Coal Reclamation Fee Report

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE) are proposing to renew an information collection relating to the Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

DATES: Interested persons are invited to submit comments on or before January 11, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov.* Please reference OMB Control Number 1029–0063 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 16, 2017 (82 FR 38933). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title: 30 CFR part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of this information, OSMRE could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM–1.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Coal mine permittees.

Total Estimated Number of Annual Responses: 11,672.

Estimated Completion Time per Response: 2–6 minutes, depending on whether respondent efiles or paper files.

Total Estimated Number of Annual Burden Hours: 389 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Quarterly.

Total Estimated Annual Nonhour Burden Cost: $361,500.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

Dated: October 25, 2017.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2017–26766 Filed 12–11–17; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; DOL-Only Performance Accountability, Information, and Reporting System

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is soliciting comments concerning the measures of performance for the Senior Community Service Employment Program (SCSEP). The Older Americans Act Reauthorization Act of 2016 (OAA–2016) amended the measures of performance for SCSEP to align them with the performance measures under the Workforce Innovation and Opportunity Act (WIOA). The Department added performance information collection requirements for SCSEP to the information collection request (ICR) titled, ''DOL-Only Performance Accountability, Information, and Reporting System.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments to the office listed in the addresses section below on or before February 12, 2018.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ETA–2017–0006 or via postal mail, commercial delivery, or hand delivery. A copy of the ICR with applicable supporting documentation,

including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from *http://www.regulations.gov* or by contacting Herman L. Quilloin III by telephone at 202–693–3994 (this is not a toll-free number) or by email at *Quilloin.Herman@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2766.

Mail and hand delivery/courier: Send written comments to: Herman L. Quilloin III, Office of Policy Development and Research, Room N5641, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Due to security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Comments submitted in response to this comment request will become a matter of public record and will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. In addition, comments, regardless of the delivery method, will be posted without change on the *http://www.regulations.gov* website; consequently, the Department recommends commenters not include personal information such as a Social Security Number, personal address, telephone number, email address, or confidential business information that they do not want made public. It is the responsibility of the commenter to determine what to include in the public record.

FOR FURTHER INFORMATION CONTACT: Herman L. Quilloin III by telephone at 202–693–3994 (this is not a toll-free number) or by email at *Quilloin.Herman@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The DOL, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This process helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The DOL-Only ICR was developed based on the requirements in WIOA Sec. 116. The Department amended the information collection by adding the performance-related reporting requirements for SCSEP to the *Participant Individual Record Layout (PIRL) (ETA–9172),* and *(Program) Performance Report (ETA–9173).*

The Department requires grantees to certify and submit the ETA (Program) Performance Report to ETA on a quarterly basis. ETA will aggregate the information the grantees submit through the PIRL to populate the ETA (Program) Performance Report and grantees will confirm their accuracy.

The OAA–2016 amended the SCSEP core indicators of performance and requires the amended measures to be implemented by regulation by December 31, 2017. SCSEP will retain its current ICR (under OMB Control Number 1205–0040) for data elements not contained in the revised DOL-Only Performance Accountability, Information and Reporting System. This ICR incorporates the SCSEP Interim Final Rule citations, as required by 5 CFR 1320.11(h). Those citations are sections 20 CFR parts: 641.700, 641.710, 641.720, 641.730, 641.740, and 641.750.

The OAA amended the measures of performance for SCSEP in large part to align SCSEP performance measures with the three employment outcome indicators mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i)(I)–(III). In addition to these three WIOA employment outcome indicators of performance, SCSEP has three measures related to participation in the program: Service level, hours of community service, and service to the most-in-need.

The Department proposes to amend the information collection by adding the regulatory citations from the SCSEP Interim Final Rule to comply with the PRA. The Department plans to review and analyze any comments received in response to this **Federal Register** Notice in order to finalize the substantive information collection requirements to the extent legally possible.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

III. Current Actions

DOL-Only Performance Accountability, Information, and Reporting System

Agency: DOL–ETA.

Title of Collection: DOL-Only Performance Accountability, Information, and Reporting System.

Type of Review: Revision.

OMB Control Number: 1205–0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 17,532,542.

Estimated Total Annual Responses: 35,064,970.

Estimated Total Annual Burden Hours: 8,938,029.

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training Administration, Labor.

[FR Doc. 2017–26677 Filed 12–11–17; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure

that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of ''General Inquiries to State Agency Contacts.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 12, 2018.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, hereinafter referred to as the ''States'') in order to jointly conduct BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics 1220–0011
Local Area Unemployment Statistics 1220–0017
Occupational Employment Statistics 1220–0042
Quarterly Census of Employment and Wages Report 1220–0012
Annual Refiling Survey 1220–0032
Labor Market Information Cooperative Agreement 1220–0079
Multiple Worksite Report 1220–0134
Annual Survey of Occupational Injuries and Illnesses 1220–0045
Census of Fatal Occupational Injuries 1220–0133
BLS/OSHS Federal State Cooperative Agreement 1220–0149

To ensure the timely flow of information and to be able to evaluate and improve the BLS/State cooperative programs' management and operations, it is necessary to conduct ongoing communications between the BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, operations, or administrative issues, questions and dialogue are crucial to the successful implementation of these programs.

II. Current Action

Office of Management and Budget clearance is being sought for the General Inquiries to State Agency Contacts. Information collected under this clearance is used to support the administrative and programmatic needs of jointly conducted BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 54.

Frequency: As needed.

Total Responses: 23,890.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours: 15,927.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of December 2017.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2017–26737 Filed 12–11–17; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0013]

Safe + Sound Campaign; Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Safe + Sound Campaign.

DATES: Comments must be submitted (postmarked, sent, or received) by February 12, 2018.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2017–0013, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier services) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2017–0013) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public

Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other materials in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Charles McCormick, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

In 2016, OSHA established the Safe + Sound Campaign, a voluntary effort to support the implementation of safety and health programs in businesses throughout the United States. Outside stakeholders, including safety and health professional organizations, trade and industry associations, academic institutions, and state and federal government agencies, collaborate with the Agency on the Campaign. The Campaign includes periodic activities and events, ranging from regular email updates to quarterly national webinars to local meetings to an annual national stand down (*i.e.,* Safe + Sound Week), designed to increase overall employer and employee awareness and understanding of safety and health programs and promote employer adoption of these programs. OSHA believes widespread implementation of such programs will substantially improve overall workplace safety and health conditions.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB approve the information collection associated with Safe + Sound Campaign activities. This voluntary information collection will include event registration and customer feedback surveys for activities throughout the year (*e.g.,* national webinars, local events, a national stand down event), outreach phone calls to recruit partners for the Campaign, and in-depth follow-up and case study interviews of event participants. OSHA is proposing burden hour estimate of seven hundred thirty-nine (739) hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: New.

Title: Safe + Sound Campaign.

OMB Control Number: 1218–0NEW.

Affected Public: Business or other for-profits.

Number of Respondents: 10,500.

Frequency of Responses: Annually.

Average Time per Response: Time varies per response.

Estimated Total Burden Hours: 739.

Estimated Cost (Operation and Maintenance): $35,857.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2017–0013). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions comments about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publically available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506

et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 6, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–26719 Filed 12–11–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0011]

Minnesota State Plan; Changes in Level of Federal Enforcement: Employment on Indian Reservations and Twin Cities Army Ammunition Plant, and Coverage Clarifications

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: This document gives notice of OSHA's approval of changes to the State of Minnesota's Occupational Safety and Health State Plan that specify that non-Indian private- sector employment within an Indian reservation or on lands held in trust by the Federal Government, and employment on land formerly occupied by the Twin Cities Army Ammunition Plant, are included in its State Plan, and that make other minor coverage clarifications.

DATES: Applicable Date: December 12, 2017.

FOR FURTHER INFORMATION CONTACT: For press inquiries, contact Francis Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information, contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667 (OSH Act), provides that States that wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining federal approval of a State Plan. State Plan approval occurs in stages that include initial approval under Section 18(c) of the Act and, ultimately, final approval under Section 18(e).

The Minnesota State Plan was initially approved under Section 18(b) of the OSHA Act. 38 FR 15077 (June 8, 1973). The State Plan later received final approval. 50 FR 30832 (July 30, 1985). The Minnesota State Plan is administered by the Minnesota Department of Labor and Industry, Minnesota Occupational Safety and Health Administration (MNOSHA). Under the Plan, MNOSHA covers state and local government employers and private-sector employers with certain exceptions. Originally, one of the exceptions was employment at the Twin Cities Army Ammunition Plant, which Federal OSHA covered because the United States had exclusive federal jurisdiction over the site. 50 FR 30832 (July 30, 1985). Later, another exception was added for tribal and private-sector employment within any Indian reservation in the State, which Federal OSHA also covered. 61 FR 36824 (July 15, 1996).

With the decommissioning and removal of the Twin Cities Army Ammunition Plant, MNOSHA requested that the exception to the State Plan's coverage for the plant be eliminated. The land on which the plant stood was transferred to the county and as such, private-sector employment on this land would fall under the State Plan's area of coverage. However, Federal OSHA continues to cover employment on land adjacent to the land transferred to the county because that adjacent land continues to be under exclusive federal jurisdiction. Federal OSHA granted this request.

MNOSHA also requested that the exception to the State Plan for tribal and private-sector employment on Indian reservations and lands held in trust by the Federal Government be changed so that MNOSHA could cover non-Indian private-sector employment in these areas. Federal OSHA continues to cover establishments owned or operated by Indian tribes or by enrolled members of Indian tribes. This approach to coverage is consistent with case law on federal and state authority over Indian lands. Federal OSHA granted this request.

These changes are reflected on the Federal OSHA web page for MNOSHA, *http://www.osha.gov/dcsp/osp/stateprogs/minnesota.html.* In addition, that web page was updated to include two longstanding coverage features of the Minnesota State Plan which are also common to other State Plans. 50 FR 30832 (July 30, 1985). Federal OSHA covers any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons unrelated to the required performance or structure of the plan. Federal OSHA also covers Federal Government employers. Additionally, Federal OSHA covers the United States Postal Service (USPS). 65 FR 36622 (June 9, 2000).

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR parts 1902 and 1953.

Signed in Washington, DC, on December 1, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–26676 Filed 12–11–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0057]

Excavations (Design of Cave-in Protection Systems); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Excavations (Design of Cave-in Protection Systems).

DATES: Comments must be submitted (postmarked, sent, or received) by February 12, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When

using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0057, U.S. Occupational Safety and Health Administration, Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0057) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the phone number below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Charles McCormick or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraphs (b) and (c) of § 1926.652 (''Requirements for Protective Systems;'' the ''Standard'') contain paperwork requirements that impose burden hours or costs on employers. These paragraphs require employers to use protective systems to prevent cave-ins during excavation work; these systems include sloping the side of the trench, benching the soil away from the excavation, or using a support system or shield (such as a trench box). The Standard specifies allowable configurations and slopes for excavations, and provides appendices to assist employers in designing protective systems. However, paragraphs (b)(3) and (b)(4) of the Standard permit employers to design sloping or benching systems based on tabulated data (Option 3), or to use a design approved by a registered professional engineer (Option 4).

Under Option 3, employers must provide the tabulated data in a written form that also identifies the registered professional engineer who approved the data and the parameters used to select the sloping or benching system drawn from the data, as well as the limitations of the data (including the magnitude and configuration of slopes determined to be safe). The document must also provide any explanatory information necessary to select the correct benching system based on the data. Option 2 requires employers to develop a written design approved by a registered professional engineer. The design information must include the magnitude and configuration of the slopes determined to be safe, and the identity of the registered professional engineer who approved the design.

Paragraph (c)(2)(iii) allows employers to use manufacturer's tabulated data or to deviate from the data provided. The manufacturer's specification, recommendations, and limitations as well as the manufacturer's approval to deviate from these items shall be in writing. Paragraphs (c)(3) and (c)(4) allow employers to design support systems, shield systems, and other protective systems based on tabulated data provided by a system manufacturer (Option 3) or obtained from other sources including a registered professional engineer and approved by a registered professional engineer (Option 4).

Each of these provisions requires employers to maintain a copy of the documents described in these options at the jobsite during construction. After construction is completed, employers may store the documents off-site provided they make them available to an OSHA compliance officer on request. These documents provide both the employer and the compliance officer with information needed to determine if the selection and design of a protective system are appropriate to the excavation work, thereby assuring workers maximum protection against cave-ins.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Excavations (Design of Cave-in Protection Systems). An increase in the number of construction from 761,873 to 931,009 projects/sites has resulted in an adjustment increase in burden hours from 14,266 to 17,262—a total increase of 2,996 burden hours. OSHA increased the number of apartment and non-residential construction sites that would use outside contractor engineering services for the required protective system design approval from 2,038 to 2,466. There was an increase in hourly wage for a civil engineer from $53.17 to $63.16, which increased the overall cost from $216,721 to $311,505, a difference of $94,784.

The Agency will summarize any comments submitted in response to this notice and will include this summary in

the request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: Excavations (Design of Cave-in Protection Systems) (29 CFR part 1926, subpart P).

OMB Control Number: 1218–0137.

Affected Public: Business or other for-profits.

Number of Respondents: 8,382.

Number of Responses: 17,262.

Frequency of Responses: On occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 17,262 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0057) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 5, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–26675 Filed 12–11–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17–088]

National Space Council Users' Advisory Group; Establishment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of establishment of the National Space Council Users' Advisory Group.

Pursuant to the NASA Authorization Act of 1991 (Pub. L. 101–611, Section 121), and Executive Order 13803 (''Reviving The National Space Council''), Section 6, signed by the President on June 30, 2017, NASA has established the National Space Council Users' Advisory Group (UAG). The UAG is a non-discretionary statutory Federal advisory committee under the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended). NASA is sponsoring and managing the operations of the UAG on behalf of the National Space Council, Executive Office of the President. This determination follows consultation with the Committee Management Secretariat of the U.S. General Services Administration.

Purpose: The purpose of the UAG is purely advisory and shall be to ensure that the interests of industry, other non-Federal entities, and other persons involved in aeronautics and space activities are adequately represented in the deliberations of the National Space Council. The National Space Council is an Executive Branch interagency coordinating committee chaired by the Vice President, which is tasked with advising and assisting the President regarding national space policy and strategy.

Membership: Members of the UAG will serve either as ''Representatives'' (representing industry, other non-Federal entities, and other recognizable groups of persons involved in aeronautical and space activities) or ''Special Government Employees'' (individual subject matter experts).

Duration: Pursuant to Section 12(b) of the NASA Authorization Act of 1991, the UAG is not subject to Section 14a(2) of FACA, and shall exist on an ongoing basis.

Responsible NASA Official: Dr. Jeff Waksman, Designated Federal Officer/Executive Secretary, NASA Headquarters, 300 E Street SW, Washington, DC 20546, phone: 202–358–3758 or email: *jeff.l.waksman@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Jeff Waksman, Designated Federal Officer/Executive Secretary, NASA Headquarters, 300 E Street SW, Washington, DC 20546, phone: 202–358–3758 or email: *jeff.l.waksman@nasa.gov.*

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–26765 Filed 12–11–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–009]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA)

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified

period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by January 11, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001

Email: request.schedule@nara.gov

FAX: 301–837–3698

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Rural Development Agency (DAA–0572–2017–0006, 15 items, 15 temporary items). Records documenting the Electric Program, including routine correspondence, loan and borrower information, field activity reports, loan applications, and routine studies. Also included is information on rural community loans used for wastewater management assistance.

2. Department of Energy, Office of Energy Efficiency & Renewable Energy (DAA–0434–2017–0012, 1 item, 1 temporary item). Records of an electronic information system designed to promote energy efficient buildings including best practices, networking information, summaries of meetings, and related documents.

3. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0008, 14 items, 14 temporary items). Forms and supporting documentation for non-adjudicative actions on pending and previously approved cases and arrival/departure document replacement requests.

4. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0034, 1 item, 1 temporary item). Master files of an electronic information system used to track and process requests from other government agencies and foreign partners for information contained in Alien Files.

5. Corporation for National and Community Service, Office of the National Service Trust (DAA–0362–2018–0003, 9 items, 9 temporary items). Records related to education awards and student loan payment benefits, including institutional registration, and requests for payment, forbearance, benefit transfer, and extension.

6. National Labor Relations Board, Agency-wide (DAA–0025–2017–0001, 22 items, 15 temporary items). Records of an electronic case management system, including undocketed correspondence, electronic submissions of representation case documentation, paper submissions of showing of interest documentation, paper submissions of other representation case documentation, back pay administration, court mediation working files, non-court settlement working files, submitted documentation, misconduct by attorneys or party representatives files where no action is taken, all other misconduct cases, drafts and informal background material, electronic case tracking data, case records unit tracking records, statistical reports, and working papers, transitory, and duplicative case file documentation. Proposed for permanent retention are official case files, advisory opinions and declaratory orders case files, sub-panel notes, panel notes, board agenda records, research publications and electronic databases, and special litigation case files.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–26694 Filed 12–11–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 18 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference unless otherwise noted.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Folk and Traditional Arts (review of applications): This meeting will be by videoconference and will be closed.

Date and time: January 8, 2018; 2:00 p.m. to 5:00 p.m.

State and Regional (review of applications): This meeting will be by videoconference and will be open.

Date and time: January 9, 2018—3:00 p.m. to 5:30 p.m., January 10, 2018—3:00 p.m. to 5:30 p.m., January 11, 2018—3:00 p.m. to 5:30 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: January 10, 2018; 2:00 p.m. to 4:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 10, 2018; 11:30 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 10, 2018; 2:30 p.m. to 4:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 11, 2018; 11:30 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 11, 2018; 2:30 p.m. to 4:30 p.m.

Folk and Traditional Arts (review of applications): This meeting will be by videoconference and will be closed.

Date and time: January 12, 2018; 1:00 p.m. to 4:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 17, 2018; 11:30 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 17, 2018; 2:30 p.m. to 4:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: January 18, 2018; 11:30 a.m. to 1:30 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: January 23, 2018; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: January 25, 2018; 1:00 p.m. to 3:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: January 25, 2018; 2:00 p.m. to 4:00 p.m.

Research (review of applications): This meeting will be closed.

Date and time: January 25, 2018; 11:00 a.m. to 1:30 p.m.

Research (review of applications): This meeting will be closed.

Date and time: January 29, 2018; 11:00 a.m. to 1:30 p.m.

State and Regional (review of applications): This meeting will be open.

Date and time: January 29, 2018; 3:00 p.m. to 4:00 p.m.

State and Regional (review of applications): This meeting will be open.

Date and time: January 30, 2018; 3:00 p.m. to 4:00 p.m.

State and Regional (review of applications): This meeting will be open.

Date and time: February 1, 2018; 3:00 p.m. to 4:00 p.m.

Dated: December 7, 2017.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2017–26735 Filed 12–11–17; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval for the Hispanic-Serving Institutions (HSI) Certification Form. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 12, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room W 18000, Alexandria, Virginia 22314; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Title of Collection: Hispanic-Serving Institutions (HSI) Certification Form.

OMB Approval Number: 3145–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to establish an information collection.

Abstract: To enhance the quality of undergraduate STEM education at Hispanic-serving institutions (HSIs), the National Science Foundation (NSF) established the Improving Undergraduate STEM Education: Hispanic-Serving Institutions (HSI Program), in response to the Consolidated Appropriations Act, 2017 (Pub. L. 115–31) and the American Innovation and Competitiveness Act (Pub. L. 114–329). The lead institution submitting a proposal to the HSI Program must be an HSI as defined by law in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a) (*http://legcounsel.house.gov/Comps/HEA65_CMD.pdf*). Hence there is a need for institutions to self-certify via an HSI Certification Form.

Expected Respondents: Hispanic-Serving Institutions.

Estimate of Burden: We anticipate 175 proposals for 2 minutes which is approximately 6 hours.

Dated: December 7, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2017–26716 Filed 12–11–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[License Nos. XSOU8707 and XSOU8827; Docket Nos. 11004455 and 11005966; Docket ID; NRC–2017–0230]

In the Matter of MP Mine Operations LLC; Order Approving Direct Transfers of Control of Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order approving a request, submitted by Molycorp Minerals LLC (Molycorp), seeking the NRC's consent to the direct transfers of control of Export Licenses XSOU8707 and XSOU8827. In addition, Molycorp requested approval of conforming license amendments to reflect the new name of the holder of the license from Molycorp Minerals LLC, to MP Mine Operations (MPMO).

DATES: The Order was issued on November 27, 2017.

ADDRESSES: Please refer to Docket IDs 11004455 and 11005966 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0230. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about the Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System:* You may obtain publicly-available documents online in the Agencywide Documents Access and Management System (ADAMS) Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Andrea R. Jones, Office of International Programs, telephone: 301–287–9072, email: *Andrea.Jones2@nrc.gov;* Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 7th day of December 2017.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

I.

Molycorp, the original Licensee, previously held export licenses nos. XSOU8707 and XSOU8827. The Licensee address included on these export licenses was the Mountain Pass rare earth mine and processing facility. After Molycorp filed for bankruptcy, MP Mine Operations LLC (MPMO) purchased the Mountain Pass rare earth mine and processing facility from Molycorp pursuant to an asset purchase agreement dated June 19, 2017, (Agencywide Documents Access and Management System [ADAMS] Accession No. ML17297B230). Although the ''purchased assets'' covered by this agreement included ''all Permits . . . to the extent transferable,'' the export licenses held by Molycorp were not transferred to MPMO at that time (see sections 2.1(b)(viii) and 2.7(a) of the asset purchase agreement). MPMO, a Delaware limited liability company, is controlled by two U.S. investment funds, JHL Capital Group Holdings Fund Two and QVT Financial LP, which combined have a 90.01 percent economic stake and own 100 percent of the voting common units for MPMO. Shenghe Resources Holding Co., Ltd., through its subsidiary Leshan Shenghe Rare Earth Co., Ltd., owns a 9.99 percent non-voting preferred stake for MPMO, and has no voting rights in MPMO. Both Shenghe Resources Holding Co., Ltd. and Leshan Shenghe Rare Earth Co., Ltd. are foreign companies.

II.

By letter dated August 14, 2017 (ADAMS Accession Nos. ML17236A034 and ML17236A039), as supplemented by letter dated October 5, 2017, (ADAMS Accession No. ML17297A131) and revised applications dated October 19, 2017, (ADAMS Accession Nos. ML17296A544 and ML17296A693), MPMO requested approval from the U.S. Nuclear Regulatory Commission (NRC) to transfer control of export licenses nos. XSOU8707 and XSOU8827 from Molycorp to MPMO. This request was made pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2234) and Title 10 of the *Code of Federal Regulations* (10 CFR) 110.50(d). In association with the proposed direct transfer, MPMO has requested that both licenses be amended to change the Licensee from Molycorp to MPMO, and that the expiration date for XSOU8827 be extended by one month (to December 31, 2021). In addition, as part of the amendment applications, MPMO provided updated contact information for the Licensee contact (John Benfield, who is currently listed as the Licensee contact on both licenses and is now working for MPMO).

The revised applications dated October 19, 2017, were made publicly available in ADAMS on October 23, 2017. No requests for hearing or comments were received.

Pursuant to Section 184 of the AEA, no license granted under 10 CFR part 110 shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the NRC, after securing full information, finds that the transfer is in accordance with the provisions of the AEA, and gives its consent in writing. Pursuant to 10 CFR 110.50(d), a specific license granted under 10 CFR part 110 may be transferred, disposed of, or assigned to another person only with the approval of the NRC by license amendment.

After review of the information in the revised applications dated October 19, 2017, and relying on statements and representations contained in the supplemental information dated October 5, 2017, the NRC staff has determined that the proposed transferee is qualified to hold the licenses and that the direct transfers of control are consistent with the applicable provisions of the AEA, regulations, and orders issued by the Commission. MPMO stated that (1) there will be no change in personnel, duties, or location; (2) all manufacturing data and information, operating instructions, documentation, operating records, files, and data were included in the asset purchase agreement and have been maintained; and (3) MPMO will abide by all constraints, conditions, and requirements of the licensed program, including the regulations in 10 CFR 110.53. The NRC staff has further determined that the request for the proposed conforming license amendments complies with the standards and requirements of the AEA, and the NRC regulations in 10 CFR part 110. The transfers of control of the licenses and issuance of the conforming license amendments will not be inimical to the common defense and security, or to the health and safety of the public, and all applicable requirements have been satisfied.

III.

Accordingly, pursuant to Section 184 of the AEA and 10 CFR 110.50(d), IT IS HEREBY ORDERED that the direct transfer of the licenses from Molycorp to MPMO, as described herein, is approved.

It is further ordered that the conforming license amendments associated with the direct transfer shall be issued.

This Order is effective upon issuance.

For further details with respect to this Order, see the revised applications dated October 19, 2017, and associated supplemental materials dated October 5, 2017. These documents are available for public inspection at the Commission Public Document Room (PDR), located at One White Flint North, Room O1–F21, 1155 Rockville Pike (first floor), Rockville, MD 20852, and available online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to

Dated at Rockville, Maryland, this 27th day of November 2017.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director, Office of International Programs.

[FR Doc. 2017–26748 Filed 12–11–17; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202)336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number OPIC–256 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–256.

Summary Form Under Review

Type of Request: Extension without change of a currently approved information collection.

Title: Investment Funds Department Questionnaire.

Form Number: OPIC–256.

Frequency of Use: One per investor per project per year.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 150 hours (approx. 1 hour per response).

Number of Responses: 150 per year.

Federal Cost: $4,026 (0.5 hour per form * 150 forms per year * $53.68 (GS–14/1 DCB)).

Authority for Information Collection: Sections 231, 234(b), and 239(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is the principal document used by OPIC to determine the investor's and the project's eligibility for OPIC funding, and to collect information for financial underwriting analysis.

Dated: December 6, 2017.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2017–26701 Filed 12–11–17; 8:45 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB 3420–00015; OPIC–115]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for OMB review

and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number OPIC–115 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–115.

Summary Form Under Review

Type of Request: Revision of a currently approved information collection.

Title: Application for Project Finance.

Form Number: OPIC–115.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 330 (1.5 hours per form * 220 forms per year).

Number of Responses: 220.

Federal Cost: $11,809.60 (1 hour per form * 220 forms per year * $53.68 (GS–14/1 DCB)).

Authority for Information Collection: Sections 231, 234(b)–(c), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Application for Project Finance is the principal document used by OPIC to determine the investor's and the project's eligibility for project financing and collect information for financial underwriting analysis.

Dated: December 6, 2017.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2017–26699 Filed 12–11–17; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–45 and CP2018–75; MC2018–46 and CP2018–76; MC2018–47 and CP2018–77; MC2018–48 and CP2018–78]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 14, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2018–45 and CP2018–75; *Filing Title:* USPS Request to Add Priority Mail Contract 384 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* December 14, 2017.

2. *Docket No(s).:* MC2018–46 and CP2018–76; *Filing Title:* USPS Request to Add Priority Mail Express Contract 54 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* December 14, 2017.

3. *Docket No(s).:* MC2018–47 and CP2018–77; *Filing Title:* USPS Request to Add Priority Mail Contract 385 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* December 14, 2017.

4. *Docket No(s).:* MC2018–48 and CP2018–78; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 64 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 6, 2017;

Filing Authority: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* December 14, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–26720 Filed 12–11–17; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on December 20, 2017 at 10:00 a.m. at the office of the Chief Actuary of the U. S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 27th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 27th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275.

For the Board.

Dated: December 6, 2017.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2017–26683 Filed 12–11–17; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82228; File No. SR–NYSE–2011–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Program Until June 30, 2018

December 7, 2017.

On July 3, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program (''Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[3] The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption, as previously extended, are scheduled to expire on December 31, 2017.[4]

The Exchange now seeks to further extend the exemption until June 30, 2018.[5] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.[6] In its request to extend the exemption, the Exchange notes that participation in the program has increased recently.[7] Accordingly, the Exchange has asked for additional time to allow the Exchange and the Commission to analyze more data concerning the Program, which the Exchange committed to provide to the Commission.[8] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds, pursuant to its authority under Rule 612(c) of Regulation NMS, that extending the exemption is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001,

[1] 17 CFR 242.612(c)

[2] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (''RLP Approval Order'').

[3] *See id.* The Sub-Penny Exemption was originally granted by the Commission concurrently with the approval of the Program. *See id.* On July 30, 2013, the Exchange requested an extension of the exemption for the Program. *See* Letter from Janet McGinness, SVP and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 30, 2013. The pilot period for the Program was extended until July 31, 2014. *See* Securities Exchange Act Release No. 70096 (August 2, 2013), 78 FR 48520 (August 8, 2013) (NYSE–2013–48). On July 30, 2014, the Exchange requested a second extension of the exemption for the Program. *See* Letter from Martha Redding, Chief Counsel, NYSE, to Kevin M. O'Neill, Deputy Secretary, Commission, dated July 30, 2014. The pilot period for the Program was extended until March 31, 2015. *See* Securities Exchange Act Release No. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (NYSE–2014–35). On February 27, 2015, the Exchange requested a third extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The pilot period for the Program was extended until September 30, 2015. *See* Securities Exchange Act Release No. 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR–NYSE–2015–10). On September 17, 2015, the Exchange requested a fourth extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. *See* Securities Exchange Act Release No. 75993 (September 28, 2015), 80 FR 59844 (October 2, 2015) (SR–NYSE–2015–41). On March 17, 2016, the Exchange requested a fifth extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. *See* Securities Exchange Act Release No. 77426 (March 23, 2016), 81 FR 17533 (March 29, 2016) (SR–NYSE–2016–25). On August 8, 2016, the Exchange requested a sixth extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. *See* Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR–NYSE–2016–54). On November 28, 2016, the Exchange requested a seventh extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. *See* Securities Exchange Act Release No. 79493 (December 7, 2016), 81 FR 90019 (December 13, 2016) (SR–NYSE–2016–82). On May 23, 2017, the Exchange requested an eighth extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. *See* Securities Exchange Act Release No. 80844 (June 1, 2017), 82 FR 26562 (June 7, 2017) (SR–NYSE–2017–26).

[4] *See* Securities Exchange Act Release No. 80844 (June 1, 2017), 82 FR 26562 (June 7, 2017) (SR–NYSE–2017–26).

[5] *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017 (''NYSE Letter'').

[6] *See* SR–NYSE–2017–64.

[7] *See* NYSE Letter, *supra* note 5 at 3.

[8] *See* RLP Approval Order, *supra* note 2, 77 FR at 40681.

in connection with the operation of its Retail Liquidity Program, until June 30, 2018.

The limited and temporary exemption extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26727 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82223; File No. SR–NYSE–2017–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Price List To Modify the Fees Related to Four Bundles of Co-Location Services in Connection With the Exchange's Co-Location Services

December 6, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 22, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List to modify the fees related to four bundles of co-location services (''Partial Cabinet Solution bundles'') in connection with the Exchange's co-location services. The Exchange proposes to implement the fee changes effective January 1, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Price List to modify the fees related to Partial Cabinet Solution bundles in connection with the Exchange's co-location services.[4]

The Exchange offers the four Partial Cabinet Solution bundles in order to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[5]

Currently, the Exchange offers Users[6] that purchase a Partial Cabinet Solution bundle on or before December 31, 2017, a 50% reduction in the monthly recurring charges (''MRC'') for the first 12 months.[7] The Exchange now proposes to:

- Extend the 50% reduction to those Users that purchase a Partial Cabinet Solution bundle on or before December 31, 2018; and
- increase the duration of the reduction from 12 months to 24 months.

The Exchange also proposes that Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months as well.[8]

The Exchange proposes to implement the fee changes effective January 1, 2018.

Specifically, the Exchange proposes to modify its Price List so that it reads as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles ..... Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	Option A: ..... 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter • For Users that order after December 31, 2018: $6,000 monthly.

[9] 17 CFR 200.30–3(a)(83).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (Sept. 21, 2010), 75 FR 59310 (Sept. 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] *See* Securities Exchange Act Release No. 77072 (Feb. 5, 2016), 81 FR 7394 (Feb. 11, 2016) (SR–NYSE–2015–53).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (Sept. 29, 2015), 80 FR 60190 (Oct. 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (Aug. 15, 2013), 78 FR 51765 (Aug. 21, 2013) (SR–NYSE–2013–59).

[7] *See* Securities Exchange Act Release No. 79715 (Dec. 30, 2016), 82 FR 1777 (Jan. 6, 2017) (SR–NYSE–2016–91).

[8] For each User that is currently benefitting from the 50% reduction, the additional 12 month period with the reduced price would begin when its current 12-month period ended. For each User whose 12-month period with the reduced price has ended, the additional 12-month period would begin upon the implementation of the proposed fee changes.

Type of service	Description	Amount of charge
	Option B: ..... 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter • For Users that order after December 31, 2018: $7,000 monthly.
	Option C: ..... 1 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter • For Users that order after December 31, 2018: $14,000 monthly.
	Option D: ..... 2 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter • For Users that order after December 31, 2018: $15,000 monthly.

The Exchange is not proposing any other changes to the Partial Cabinet Solution bundles.[9]

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[10] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[11]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Exchange proposes to offer the 50% reduction in the MRC, and the increase in the duration of the reduction from 12 months to 24 months, to all Users equally. As is currently the case, the purchase of any colocation service (including Partial Cabinet Solution bundles) is completely voluntary. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months.

The Exchange believes that extending the 50% reduction in the MRC for Partial Cabinet Solution bundles, and increasing the duration of the reduction, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Partial Cabinet Solution bundles would continue to offer four different Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them.

In addition, the Exchange believes that its proposal would remove impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because the proposed extension of the 50% reduction in MRC and the proposed increase in the duration of the reduction would continue to make it more cost effective for Users to utilize co-location by creating a convenient way to create a colocation environment, through four Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months is designed to prevent fraudulent and manipulative

[9] The Commission notes that previous filings stated that Users that purchase a Partial Cabinet Solution bundle would be subject to a 90-day minimum commitment, after which period they are subject to a 60-day rolling time period. The Exchange has represented to Commission staff that these provisions have not changed.

[10] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[11] *See* SR–NYSE–2013–59, *supra* note 6, at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2017–35 and SR–NYSEArca–2017–134.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable that Users that order a Partial Cabinet Solution bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months because it is reasonable to continue to offer such reduction as an incentive to Users to utilize the service, including both new and past Users of bundles. As noted above, the Exchange anticipates that Users of the Partial Cabinet Solution bundles would include those with minimum power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

[14] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the Partial Cabinet Solution bundles, and the increased duration of the reduction, would apply to all Users).

The Exchange believes that extending the 50% reduction in the MRC and increasing the duration of the reduction will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will continue to satisfy User demand for cost effective options for smaller Users that choose to utilize co-location. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months. The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

The proposed changes will also enhance competition by making it more cost effective for Users that purchase a Partial Cabinet Solution bundle to utilize co-location by creating a convenient way to create a colocation environment, through Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose to pass on such cost savings to their customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

[15] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2017–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–62 and should be submitted on or before January 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26685 Filed 12–11–17; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82226; File No. SR–NYSEARCA–2017–134]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges To Modify the Fees Related to Four Bundles of Co-Location Services in Connection With the Exchange's Co-Location Services

December 6, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 22, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') to modify the fees related to four bundles of co-location services (''Partial Cabinet Solution bundles'') in connection with the Exchange's co-location services. The Exchange proposes to implement the fee changes effective January 1, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Fee Schedules to modify the fees related to Partial Cabinet Solution bundles in connection with the Exchange's co-location services.[4]

The Exchange offers the four Partial Cabinet Solution bundles in order to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[5]

Currently, the Exchange offers Users[6] that purchase a Partial Cabinet Solution bundle on or before December 31, 2017 a 50% reduction in the monthly recurring charges (''MRC'') for the first 12 months.[7] The Exchange now proposes to:

- Extend the 50% reduction to those Users that purchase a Partial Cabinet Solution bundle on or before December 31, 2018; and
- increase the duration of the reduction from 12 months to 24 months.

The Exchange also proposes that Users that already purchased a Partial Cabinet Solution bundle have the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] *See* Securities Exchange Act Release No. 77070 (Feb. 5, 2016), 81 FR 7401 (Feb. 11, 2016) (SR–NYSEArca–2015–102).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE MKT LLC (''NYSE MKT'' and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[7] See Securities Exchange Act Release No. 79716 (Dec. 30, 2016), 82 FR 1774 (Jan. 6, 2017) (SR–NYSEArca–2016–168).

duration of their 50% reduction increased from 12 months to 24 months as well.[8]

The Exchange proposes to implement the fee changes effective January 1, 2018.

Specifically, the Exchange proposes to modify its Fee Schedules so that they read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles ..... **Note:** A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes.".	Option A: ..... 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2018: $6,000 monthly.
	Option B: ..... 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2018: $7,000 monthly.
	Option C: ..... 1 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2018: $14,000 monthly.
	Option D: ..... 2 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2018: $15,000 monthly.

The Exchange is not proposing any other changes to the Partial Cabinet Solution bundles.[9]

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[10] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[11]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Exchange proposes to offer the 50% reduction in the MRC, and the increase in the duration of the reduction from 12 months to 24 months, to all Users equally. As is currently the case, the purchase of any co-location service (including Partial Cabinet Solution

[8] For each User that is currently benefitting from the 50% reduction, the additional 12 month period with the reduced price would begin when its current 12-month period ended. For each User whose 12-month period with the reduced price has ended, the additional 12-month period would begin upon the implementation of the proposed fee changes.

[9] The Commission notes that previous filings stated that Users that purchase a Partial Cabinet Solution bundle would be subject to a 90-day minimum commitment, after which period they are subject to a 60-day rolling time period. The Exchange has represented to Commission staff that these provisions have not changed.

[10] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[11] *See* SR–NYSEArca–2013–80, *supra* note 6, at 50459. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2017–62 and SR–NYSEAMER–2017–35.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

bundles) is completely voluntary. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months.

The Exchange believes that extending the 50% reduction in the MRC for Partial Cabinet Solution bundles, and increasing the duration of the reduction, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Partial Cabinet Solution bundles would continue to offer four different Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them.

In addition, the Exchange believes that its proposal would remove impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because the proposed extension of the 50% reduction in MRC and the proposed increase in the duration of the reduction would continue to make it more cost effective for Users to utilize co-location by creating a convenient way to create a co-location environment, through four Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable that Users that order a Partial Cabinet Solution bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months because it is reasonable to continue to offer such reduction as an incentive to Users to utilize the service, including both new and past Users of bundles. As noted above, the Exchange anticipates that Users of the Partial Cabinet Solution bundles would include those with minimum power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the Partial Cabinet Solution bundles, and the increased duration of the reduction, would apply to all Users).

The Exchange believes that extending the 50% reduction in the MRC and increasing the duration of the reduction will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will continue to satisfy User demand for cost effective options for smaller Users that choose to utilize co-location. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months. The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

The proposed changes will also enhance competition by making it more cost effective for Users that purchase a Partial Cabinet Solution bundle to utilize co-location by creating a convenient way to create a co-location environment, through Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose to pass on such cost savings to their customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

For the reasons described above, the Exchange believes that the proposed

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(8).

rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2017–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2017–134. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2017–134 and should be submitted on or before January 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26688 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82224; File No. SR–NYSEAMER–2017–35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule To Modify the Fees Related to Four Bundles of Co-Location Services in Connection With the Exchange's Co-Location Services

December 6, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 22, 2017, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') to modify the fees related to four bundles of co-location services (''Partial Cabinet Solution bundles'') in connection with the Exchange's co-location services. The Exchange proposes to implement the fee changes effective January 1, 2018. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Price List and Fee Schedule to modify the fees related to Partial Cabinet Solution bundles in connection with the Exchange's co-location services.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

The Exchange offers the four Partial Cabinet Solution bundles in order to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[5]

Currently, the Exchange offers Users[6] that purchase a Partial Cabinet Solution bundle on or before December 31, 2017, a 50% reduction in the monthly recurring charges (''MRC'') for the first 12 months.[7] The Exchange now proposes to

- extend the 50% reduction to those Users that purchase a Partial Cabinet Solution bundle on or before December 31, 2018; and
- increase the duration of the reduction from 12 months to 24 months.

The Exchange also proposes that Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months as well.[8]

The Exchange proposes to implement the fee changes effective January 1, 2018.

Specifically, the Exchange proposes to modify its Price List and Fee Schedule so that they read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles ..... **Note:** A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2018: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2018: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2018: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2018: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2018: $15,000 monthly.

The Exchange is not proposing any other changes to the Partial Cabinet Solution bundles.[9]

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[10] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects

[5] *See* Securities Exchange Act Release No. 77071 (Feb. 5, 2016), 81 FR 7382 (Feb. 11, 2016) (SR–NYSEMKT–2015–89).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[7] *See* Securities Exchange Act No. 79717 (Dec. 30, 2016), 82 FR 1767 (Jan. 6, 2017) (SR–NYSEMKT–2016–123).

[8] For each User that is currently benefitting from the 50% reduction, the additional 12-month period with the reduced price would begin when its current 12-month period ended. For each User whose 12-month period with the reduced price has ended, the additional 12-month period would begin upon the implementation of the proposed fee changes.

[9] The Commission notes that previous filings stated that Users that purchase a Partial Cabinet Solution bundle would be subject to a 90-day minimum commitment, after which period they are subject to a 60-day rolling time period. The Exchange has represented to Commission staff that these provisions have not changed.

[10] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

only to the Exchange or to the Exchange and one or both of its affiliates.[11]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Exchange proposes to offer the 50% reduction in the MRC, and the increase in the duration of the reduction from 12 months to 24 months, to all Users equally. As is currently the case, the purchase of any colocation service (including Partial Cabinet Solution bundles) is completely voluntary. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months.

The Exchange believes that extending the 50% reduction in the MRC for Partial Cabinet Solution bundles, and increasing the duration of the reduction, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Partial Cabinet Solution bundles would continue to offer four different Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them.

In addition, the Exchange believes that its proposal would remove impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because the proposed extension of the 50% reduction in MRC and the proposed increase in the duration of the reduction would continue to make it more cost effective for Users to utilize co-location by creating a convenient way to create a colocation environment, through four Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable that Users that order a Partial Cabinet Solution bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months because it is reasonable to continue to offer such reduction as an incentive to Users to utilize the service, including both new and past Users of bundles. As noted above, the Exchange anticipates that Users of the Partial Cabinet Solution bundles would include those with minimum power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the Partial Cabinet Solution bundles, and the increased duration of the reduction, would apply to all Users).

The Exchange believes that extending the 50% reduction in the MRC and increasing the duration of the reduction will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will continue to satisfy User demand for cost effective options for smaller Users that choose to utilize co-location. All Users that order a bundle on or before December 31, 2018 would have their MRC reduced by 50% for the first 24 months. The Exchange believes that the proposed change to have Users that already purchased a Partial Cabinet Solution bundle have the duration of their 50% reduction increased from 12 months to 24 months would ensure that all Users that purchase a Partial Cabinet Solution bundle prior to December 31, 2018 benefit from the 50% reduction for a total of 24 months.

[11] *See* SR–NYSEMKT–2013–67, *supra* note 6, at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2017–62 and SR–NYSEArca–2017–134.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(8).

The proposed changes will also enhance competition by making it more cost effective for Users that purchase a Partial Cabinet Solution bundle to utilize co-location by creating a convenient way to create a colocation environment, through Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose to pass on such cost savings to their customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2017–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2017–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2017–35 and should be submitted on or before January 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26686 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form 2–E under Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-annually on Form 2–E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering commenced and was completed (if completed), the number of shares sold and still being offered, amounts received in the offering, and expenses

and underwriting discounts incurred in the offering. The information provided on Form 2–E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

There has not been a Form 2–E filing since calendar year 2010, when there was one filing of Form 2–E by one respondent. The Commission has previously estimated that the total annual burden associated with information collection and Form 2–E preparation and submission is four hours per filing. Although there have been no filings made under this rule since 2010, we are requesting one annual response and an annual burden of one hour for administrative purposes.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 609 and Form 2–E is mandatory. The information provided under rule 609 and Form 2–E will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26671 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32935; 812–14820]

Calvert Research and Management and Calvert ETF Trust

December 6, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: Calvert Research and Management (the ''Initial Adviser''), a Massachusetts business trust, that is registered as an investment adviser under the Investment Advisers Act of 1940 and Calvert ETF Trust (the ''Trust''), a Massachusetts business trust that intends to register under the Act as an open-end management investment company with multiple series.

FILING DATE: The application was filed on September 20, 2017 and amended on November 14, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 2, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 1825 Connecticut Avenue NW, Suite 400, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6821, or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the

[1] Applicants request that the order apply to the new series of the Trust, any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser or any successor thereto (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested Order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. Certain of the Funds will track an Underlying Index that is compiled, created, sponsored, or maintained by an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor (each a ''Self-Indexing Fund'').[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26700 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82227; File No. SR–CboeBZX–2017–007]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Applicable to Its Equity Options Platform

December 6, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b 4 thereunder,[2] notice is hereby given that on November 28, 2017, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule applicable to its equity options platform (''BZX Options'') to adopt fees for receipt of historical market data.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its BZX Options fee schedule to adopt fees for historical market data. The Exchange proposes to begin providing historical data to data recipients upon request for a fee. The Exchange currently provides historical data upon request on an ad hoc basis, but proposes to begin charging a fee due to the infrastructure costs of storing and providing such data. Similar to what it does today, the Exchange proposes to provide a data recipient with the requested historical data on an external hard drive provided by the Exchange. As an alternative means to obtain historical data, the Exchange provides market participants with access to a database from which they can download data that is up to 3 months old. As proposed, the Exchange will offer historical data from the Exchange's PITCH data feed for a fee of $500 per month of data accessed by any individual user. The Exchange's databases will contain up to 90 days of data at any point in time. For data that the Exchange provides on an external hard drive to a market participant the proposed cost is $2,500 per 1 terabyte (TB) drive generated by the Exchange. Historical data would be provided to data recipients for internal use only, and thus, no redistribution will be permitted. The proposed rates are identical to the rates it charges for historical data on its equity trading platform (''BZX Equities'').[5]

Historical data provided by the Exchange can be used for a variety of purposes. For instance, data recipients may use historical data to back-test certain trading strategies. As another example, data recipients that provide market information through public websites or develop dynamic stock tickers, portfolio trackers, price/time graphs and other visual systems can use historical data for such purposes.

The Exchange proposes to implement the proposed change to its fee schedule on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. The Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data. Furthermore, the proposed rates are identical to the rates the Exchange charges for historical data on BZX Equities,[8] which have been previously filed with the Commission and subject to notice and comment.[9]

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[10] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[11] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. Historical data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Cboe BZX U.S. Equities Exchange Fee Schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Cboe BZX U.S. Equities Exchange Fee Schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[9] *See* Securities Exchange Act Release Nos. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR–BATS–2010–002).

[10] 15 U.S.C. 78k–1.

[11] *See* 17 CFR 242.603.

proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to historical data further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to distribute historical data, prospective Users likely would not subscribe to, or would cease subscribing to, the Exchange's historical data.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[12]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price historical data is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

The availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to historical data, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2017–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2017–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[12] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2017–007 and should be submitted on or before January 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26689 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82225; File No. SR–NYSE–2017–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Listed Company Manual To Modify Its Requirements With Respect to Delivery of Proxy Materials to the Exchange

December 6, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 22, 2017, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Listed Company Manual (the ''Manual'') to modify its requirements with respect to delivery of proxy materials to the Exchange. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Manual to modify its requirements with respect to delivery of proxy materials to the Exchange.

The Manual currently includes two provisions requiring listed companies to provide physical copies of proxy materials to the Exchange. Section 204.00(B) requires listed companies to provide six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders. Section 402.01 requires listed companies to provide three definitive copies of the proxy material (together with proxy card) not later than the date on which such material is sent, or given, to any security holders.

The Exchange proposes to delete from Section 204.00(B) a provision stating that listed companies are required to file hard copies of certain SEC reports and other material (such as proxies) with the Exchange, as this provision is inconsistent with the Exchange's proposed revised approach to the review of SEC filings. To that end, the Exchange proposes to modify Section 204.00(B) so as to require companies to send hard copy proxy materials to the Exchange only (i) in the circumstances specified by Section 402.01 in its proposed amended form and (ii) one hard copy of any filing that is not required to be filed through EDGAR, including pursuant to a hardship exemption granted by the SEC.

In addition, the Exchange proposes to amend Section 402.01 to provide that listed companies will not be required to provide proxy materials to the Exchange in physical form, provided such proxy materials are included in an SEC filing available on the SEC's EDGAR filing system. Any listed company whose proxy materials are available on EDGAR but not filed pursuant to Schedule 14A under the Act will be required to provide to the Exchange information sufficient to identify such filing (by one of the means specified in Section 204.00(A)) not later than the date on which such material is sent, or given, to any security holders. Notwithstanding the foregoing, any listed company whose proxy materials are not included in their entirety (together with proxy card) in an SEC filing available on EDGAR will continue to be required to provide three physical copies of any proxy material not available on EDGAR to the Exchange not later than the date on which such material is sent, or given, to any security holders, consistent with the requirements of Rule 14a–6(b) under the Act.[4] The Exchange also proposes to correct an erroneous reference to Rule 14–a(6)(c) [sic] in Section 402.01 to refer instead to part (c) of that rule.

The Exchange notes that almost all U.S. domestic listed companies are subject to the SEC's proxy rules. Those companies are required to file their proxy materials on the SEC's EDGAR system and the relevant filings are readily identifiable as being filed under Schedule 14A under the U.S. proxy rules. Exchange staff receives alerts when filings are submitted to the SEC and generally reviews proxy materials on EDGAR shortly after filing. This review has generally been completed long before the Exchange receives hard copies of proxy materials and the Exchange therefore has no real need to receive hard copies.

Listed foreign private issuers are not required to comply with the U.S. proxy rules, although the NYSE does require these companies to solicit proxies. However, many foreign private issuers furnish and submit their proxy materials to the SEC as part of a Form 6–K (or, in the case of foreign private issuers that voluntarily submit periodic reports applicable to domestic companies, proxy materials may instead be included in a Form 8–K). As foreign

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 14a–6(b).

private issuers often file or submit a significant number of Forms 6–K (or Form 8–K, as the case may be) during a year and there is no easy way to identify which one includes a company's proxy materials, the Exchange proposes to require listed foreign private issuers to provide to the Exchange in electronic format the information needed to identify the submission containing proxy materials. Similarly, domestic companies occasionally file their proxy materials with the SEC on EDGAR on forms other than Schedule 14A and which may not be readily identified by Exchange staff (for example, such material may be included in a Form S–4 registration statement). The Exchange's proposal would require such companies to provide electronically to the Exchange the information needed to identify the applicable filing in which the proxy material is included. In each of these cases, the information must be provided by one of the means specified in Section 204.00(A).[5] However, in the event that an issuer is not required to file its proxy material on EDGAR (*e.g.,* pursuant to a hardship exemption provided by the SEC staff[6]) or does not include all of the relevant proxy material in its entirety in a filing that can be reviewed on EDGAR, the company must provide three physical copies of all of the proxy material unavailable on EDGAR to the Exchange not later than the date on which such material is sent, or given, to any security holders.

The Exchange's proposed approach would ensure that the Exchange staff will continue to be able to review all listed company proxy material in a timely manner and without disruption of existing review procedures. The proposal also has the benefit of eliminating a significant amount of unnecessary use of paper and of resources devoted to processing unneeded materials received through the mail.

The Exchange recognizes that Rule 14a–6(b) under the Act requires listed companies that are subject to the U.S. proxy rules to deliver hard copies of proxy materials to their listing exchange. In this regard, the Exchange notes that it has previously been granted no action relief by the SEC staff in relation to the obligation of listed companies to provide hard copy material to the Exchange of materials filed with the SEC via EDGAR, including proxy materials.[7] At the time that such no action relief was granted, the Exchange decided not to rely on it in relation to proxy materials, but believes that it is appropriate to do so now for the reasons set forth above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change is consistent with the protection of investors and the public interest because the Exchange will generally be able to review proxy materials on EDGAR and will continue to require companies to provide proxy materials to the Exchange in physical form if they are not filed on EDGAR. It is consistent with the protection of investors and the public interest to require companies to provide the Exchange with information via its own online system as to how to identify the applicable SEC filing in which proxy materials not filed on Schedule 14A may be found, as this approach will enable the Exchange to review this material in a more timely and efficient manner. The ability of the Exchange to review material in a more timely manner furthers the goal of investor protection, as it enables the Exchange to identify regulatory issues more quickly and take corrective action where necessary. The Exchange recognizes that Rule 14a–6(b) under the Act requires listed companies that are subject to the U.S. proxy rules to deliver hard copies of proxy materials to their listing exchange. In this regard, the Exchange notes that it has previously been granted no action relief by the SEC staff in relation to the obligation of listed companies to provide hard copy material to the Exchange of materials filed with the SEC via EDGAR.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange does not believe that the proposed amendments will impose any burden on competition, as their purpose is to eliminate unnecessary deliveries of physical proxy materials to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[5] Section 204.00 requires that notice must be provided via a web portal or email address specified by the Exchange on its website, except in emergency situations, when notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website.

[6] *See* 17 CFR 232.201 and .202.

[7] *See* letter dated July 22, 1998 from Ann M. Krauskopf, Special Counsel, Division of Corporation Finance, SEC, and Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, SEC, to Michael J. Simon, Milbank, Tweed, Hadley & McCloy (the ''1998 No-Action Letter''). The 1998 No-Action Letter also granted the Exchange relief in relation to documents available for review on EDGAR from the recordkeeping requirements of Rule 17a–1 under the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2017–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–42 and should be submitted on or before January 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–26687 Filed 12–11–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10225]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a Modified System of Records.

SUMMARY: This System of Records compiles information about Department of State user accounts to monitor and control access to Department of State networks and computer systems.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records takes effect upon publication, with the exception of the routine uses (a) and (b) that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by January 11, 2018.

ADDRESSES: Questions can be submitted by mail or email. If mail, please write to: U.S. Department of State; Office of Global Information Systems, Privacy Staff; A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Chief Privacy Officer, Margaret P. Grafeld, at *Privacy@state.gov.* Please write ''Network User Account Records, State-56'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Chief Privacy Officer; U.S. Department of State; Office of Global Information Services, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208 or 202–261–8300.

SUPPLEMENTARY INFORMATION: The purpose of this modification is to make substantive and administrative changes to the previously published notice. This notice modifies the following sections of State-56, Network User Account Records: System Location, Categories of Individuals, Routine Uses, Storage, Safeguards. In addition, this notice makes administrative updates to the following sections: Policies and Procedures for Retrieval of Records, Record Access Procedures, Notification Procedures, and History. These changes reflect the Department's move to cloud storage, new OMB guidance, access by contractors, updated contact information, and a notice publication history.

SYSTEM NAME AND NUMBER:

Network User Account Records, State-56.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State (''Department''), located at 2201 C Street NW, Washington, DC 20520, and within a government cloud provided, implemented, and overseen by the Department's Enterprise Server Operations Center (ESOC), 2201 C Street NW, Washington, DC 20520.

SYSTEM MANAGER(S):

Chief Information Officer, Bureau of Information Resource Management, Department of State, 2201 C Street, NW, Washington, DC 20520 and can be reached at either *ITServiceCenter@state.gov* or (202) 647–2000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3544.

PURPOSE(S) OF THE SYSTEM:

To administer Department network user accounts; to help document and/or control access to computer systems, platforms, services, applications, and databases within a Department network and Department-authorized cloud services and applications; to monitor security of computer systems; to investigate and make referrals for disciplinary or other actions if unauthorized access or inappropriate usage is suspected or detected; and to identify the need for training programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State employees and other organizational users (examples include eligible family members, locally employed staff, contractors, and personal services contractors) who have access to Department of State computer networks and access to cloud computing applications that are authorized for processing Department information. The Privacy Act defines an individual at 5 U.S.C.552a(a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of the network and application user account records that Department information technology systems, applications, and services compile and maintain about users of a network and application. These records include user data such as the user's name, system-assigned username; email address; employee or other user identification number; organization code; job title; business affiliation; work contact information; systems, applications, or services to which the individual has access; systems, applications, or services used; dates, times, and durations of use; profile photo; user profile; and IP address of access. The records also include system usage files and directories when they contain information about specific users.

RECORD SOURCE CATEGORIES:

Individuals about whom the network user account record is maintained; information technology systems, applications, and services within a Department network that record usage by individuals assigned a user account on that network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records may be disclosed:

(a) To appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b) To another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to many of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Network User Account Records, State-56.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found in the Department's Foreign Affairs Manual (*https://fam.state.gov/FAM/05FAM/05FAM0440.html*). All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by the name; system-assigned username; email address; or other searchable data fields or codes.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records maintained in this system of records are generally destroyed three to six years after the user account is terminated. These records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA), and a complete list of the Department's schedules can be found on our Freedom of Information Act (FOIA) program's website (*https://foia.state.gov/Learn/RecordsDisposition.aspx*). More specific information may be obtained by writing to the following address: Director, Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW, Washington, DC 20522–8100.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cyber security awareness training that covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. While the majority of records covered in the Network User Account Records are electronic, all paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

Before being granted access to Network User Account Records, a user must first be granted access to the Department of State computer system. Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured with the authentication requirements contained in the Office of Management and Budget Circular Memorandum A–130. All Department of State employees and contractors with authorized access have undergone a background security investigation.

The Department of State will store records maintained in this system of records in cloud systems. All cloud systems that provide IT services and process Department of State information must be authorized to operate by the Department of State Authorizing Official and Senior Agency Official for Privacy. Only information that conforms with Department-specific definitions for FISMA low or moderate categorization are permissible for cloud usage unless specifically authorized by the Department's Cloud Computing Governance Board. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB guidance, NIST Federal Information Processing Standards (FIPS) and Special Publications, and Department of State policy and standards.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Network User Account Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Network User Account Records include records pertaining to him or her. Detailed instructions on Department of State procedures for accessing and amending records can be found at the Department's FOIA website (*https://foia.state.gov/Request/Guide.aspx*).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/

GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Network User Account Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Network User Account Records include records pertaining to him or her.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This SORN was previously published at 75 FR 7210.

Mary R. Avery,

Senior Agency Official for Privacy, Senior Advisor, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2017–26750 Filed 12–11–17; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 10226]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a New System of Records.

SUMMARY: The purpose of the Email Archive Management Records system is to capture all emails and attachments that interact with a Department of State email account and to store them in a secure repository that allows for search, retrieval, and view when necessary.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records takes effect upon publication, with the exception of the routine uses that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by January 11, 2018.

ADDRESSES: Comments can be submitted by mail or email. If mail, please write to: U.S. Department of State; Office of Global Information Systems, Privacy Staff; A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Chief Privacy Officer, Margaret P. Grafeld, at *Privacy@state.gov.* Please write ''Email Archive Management Records, State-01'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Chief Privacy Officer; U.S. Department of State; Office of Global Information Services, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208 or 202–261–8300.

SUPPLEMENTARY INFORMATION: None.

SYSTEM NAME AND NUMBER:

Email Archive Management Records, State-01.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State (''Department'), located at 2201 C Street NW, Washington, DC 20520; Department of State annexes, U.S. Embassies, U.S. Consulates General, and U.S. Consulates. Information may also be stored within a government-certified cloud, implemented, and overseen by the Department's Messaging Systems Office (MSO), 2025 E. St. NW, Washington, DC 20006.

SYSTEM MANAGER(S):

Division Chief, Office of Information Resource Management, Messaging Systems Office, Messaging Design Division; U.S. Department of State, 7049 Newington Rd; Lorton, VA 22079. The System Manager can be reached at (703) 746–2113.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 5 U.S.C. 301

(b) Federal Records Act, 44 U.S.C. Ch. 31;

(c) Freedom of Information Act, 5 U.S.C. 552.

(d) Privacy Act of 1974, 5 U.S.C.552a(d).

(e) 22 CFR part 171.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to capture all emails and attachments that interact with a Department of State email account and to store them in a secure repository that allows for search, retrieval, and view when necessary.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who maintain a Department of State email account that is archived in the system. The system may also include information about individuals who interact with a Department of State email account, as well as individuals who are mentioned in a Department of State email message or attachment. The Privacy Act defines an individual at 5 U.S.C.552a(a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include email messages and attachments associated with a Department of State email account, including any information that may be included in such messages or attachments. The system may also include biographic and contact information of individuals who maintain a Department of State email account, including name, address, email address, and phone number.

RECORD SOURCE CATEGORIES:

These records contain information obtained from individuals who maintain a Department of State email account, as well as those who interact with such individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the system may be shared with:

(a) Other federal agencies, foreign governments, and private entities where relevant and necessary for them to review or consult on documents that implicate their equities;

(b) a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(c) appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(d) another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency

or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(e) an agency, whether federal, state, local or foreign, where a record indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, so that the recipient agency can fulfill its responsibility to investigate or prosecute such violation or enforce or implement the statute, rule, regulation, or order.

(f) the Federal Bureau of Investigation, the Department of Homeland Security, the National Counter-Terrorism Center (NCTC), the Terrorist Screening Center (TSC), or other appropriate federal agencies, for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by recipient agencies to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection and other homeland security purposes.

(g) a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(h) a court, adjudicative body, or administrative body before which the Department is authorized to appear when (a) the Department; (b) any employee of the Department in his or her official capacity; (c) any employee of the Department in his or her individual capacity where the U.S. Department of Justice (''DOJ'') or the Department has agreed to represent the employee; or (d) the Government of the United States, when the Department determines that litigation is likely to affect the Department, is a party to litigation or has an interest in such litigation, and the use of such records by the Department is deemed to be relevant and necessary to the litigation or administrative proceeding.

(i) the Department of Justice (''DOJ'') for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the Department deems DOJ's use of such information relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component of it;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The Government of the United States, where the Department determines that litigation is likely to affect the Department or any of its components.

(j) the National Archives and Records Administration and the General Services Administration: For records management inspections, surveys and studies; following transfer to a Federal records center for storage; and to determine whether such records have sufficient historical or other value to warrant accessioning into the National Archives of the United States.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic media. A description of standard Department of State policies concerning storage of electronic records is found here *https://fam.state.gov/FAM/05FAM/05FAM0440.html.*

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By individual name or other personal identifier, if available.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department of State is in the process of finalizing a retention schedule for these records. Once the schedule is approved by the National Archives and Records Administration, the Records will be retired in accordance with the published Department of State Records Disposition Schedule that shall be published here: *https://foia.state.gov/Learn/RecordsDisposition.aspx.* More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive But Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Employed Staff who handle PII are required to take a distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Email Archive Management Records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department-owned systems is authorized only to unclassified systems and through a Department-approved access program. Remote access to the network is configured with the authentication requirements contained in the Office of Management and Budget Circular Memorandum A–130.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to Department of State workstations/networks requires a valid PKI identification card protected by a user's PIN that must first be entered before accessing the Department of State network. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

The safeguards in the following paragraphs apply only to records that are maintained in cloud systems. All cloud systems that provide IT services and process Department of State information must be specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy.

Information that conforms with Department-specific definitions for FISMA low, moderate, or high categorization are permissible for cloud usage and must specifically be authorized by the Cloud Computing Governance Board. Specific security measures and safeguards will depend on

the FISMA categorization of the information in a given cloud system. The Email Archive Management Records system is rated as a FISMA high system. In accordance with Department policy, systems that process more sensitive information will require more stringent controls and review by Department cybersecurity experts prior to approval. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB regulations, NIST Federal Information Processing Standards (FIPS) and Special Publication (SP), and Department of State policies and standards.

All data stored in cloud environments categorized above a low FISMA impact risk level must be encrypted at rest and in-transit using a federally-approved encryption mechanism. The encryption keys shall be generated, maintained, and controlled in a Department data center by the Department key management authority. Deviations from these encryption requirements must be approved in writing by the Authorizing Official. Data in Email Archive Management Records categorized at a high FISMA impact risk level will additionally be subject to continual auditing and monitoring, multifactor authentication mechanisms utilizing PKI, NIST 800–53 controls concerning virtualization, servers, storage and networking as well as stringent measures to sanitize data from the cloud service once the contract is terminated.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Email Archive Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Email Archive Management Records include records pertaining to him or her. Detailed instructions on Department of State procedures for accessing and amending records can be found at *https://foia.state.gov/Request/Guide.aspx.*

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; SA–2, Suite 8100; Washington, DC 20522–0208. The individual must specify that he or she wishes the Email Archive Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Email Archive Management Records include records pertaining to him or her.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a (j)(2), records in this system may be exempted from subsections (c)(3) and (4), (d), (e)(1), (2), (3), and (e)(4)(G), (H), and (I), and (f) of the Privacy Act.

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7), records in this system may be exempted from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

Any other exempt records from other agencies' systems of records that are recompiled into this system are also considered exempt to the extent they are claimed as such in the original systems.

HISTORY:

None.

Mary R. Avery,

Senior Agency Official for Privacy, Senior Advisor, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2017–26752 Filed 12–11–17; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Neville Peterson LLP on behalf of Trinity Industries, Inc. (WB17–51—12/05/17) for permission to use certain data from the Board's 2016 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–26674 Filed 12–11–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Land Use Change From Aeronautical to Non-Aeronautical Use for 419 Acres of Airport Land for Solar Farm Use at Sanford Seacoast Regional Airport, Sanford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Sanford Seacoast Regional Airport, to change the current land use from aeronautical use to non-aeronautical use of 419 acres of land. The parcels are located along the southwesterly side of Runway 07/25, the northerly end of Runway 25 and in a portion of the infield area between Runway 07/25 and Runway 14/32. There is adequate developable area on the airport to meet the future twenty year need for projected activity and the Airport Layout Plan was updated with a Pen and Ink change to designate the parcels for non-aeronautical use. The airport will obtain fair market value for the lease of the land and the income derived from this lease will be placed in the airport's operation and maintenance funds for the facility.

DATES: Comments must be received on or before January 11, 2018.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on November 20, 2017.

Kathleen Coffey,

Acting Manager, ANE–600.

[FR Doc. 2017–26772 Filed 12–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Land Use Change From Aeronautical to Non-Aeronautical Use for 22.1 Acres of Airport Land for Solar Farm Use at Brunswick Executive Airport, Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Midcoast Regional Redevelopment Authority (MRRA), to change the current land use from aeronautical use to non-aeronautical use of a 22.1-acre parcel of land. The parcel is located in the northern quadrant of the airport adjacent, but separate from the airside area. The Airport Layout Plan was updated with a Pen and Ink Change to designate the parcel for non-aeronautical use. The airport will obtain fair market value for the lease of the land. The income derived from this lease will be placed in the airport's operation and maintenance funds for the facility.

DATES: Comments must be received on or before January 11, 2018.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on November 20, 2017.

Kathleen Coffey,

Acting Manager, ANE–600.

[FR Doc. 2017–26774 Filed 12–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Land Swap Between the Northern Maine Regional Airport and the Presque Isle Industrial Council, Presque Isle, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Northern Maine Regional Airport, for a land swap with the Presque Isle Industrial Council. The on-airport land, currently in use as non-aeronautical development, is to be swapped with four parcels of land along the northern ramp area of airport and land within the northern approach. The land swap will further enhance the protection of the northern approach area while also providing developable land for aeronautical uses.

DATES: Comments must be received on or before January 11, 2018.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on November 20, 2017.

Kathleen Coffey,

Acting Manager, ANE–600.

[FR Doc. 2017–26771 Filed 12–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–98]

Petitions for Exemptions; Summary of Petition Received; Extension of Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice: Extension.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to extend the comment period to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 5, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–1046 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynette Mitterer, AIR673, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98057–3356, email *Lynette.Mitterer@faa.gov,* phone (425) 227–1047; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on December 6, 2017.

Suzanne Masterson,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–1046.

Petitioner: Bombardier Inc.

Section of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: Allow installation of doors between passenger seats and emergency exits on the Bombardier Model BD–700–2A12 (Global 7000) and BD–700–2A13 (Global 8000) airplanes. The exemption, if granted, would not prohibit aircraft with interior doors from being operated for hire pursuant to 14 CFR part 135.

[FR Doc. 2017–26682 Filed 12–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0666]

Agency Information Collection Activity Under OMB Review: Information Regarding Apportionment of Beneficiary's Award

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Information Regarding Apportionment of Beneficiary's Award (VA Form 21–0788).

OMB Control Number: 2900–0666.

Type of Review: Re-instatement of a currently approved collection.

Abstract: VA Form 21–0788 is used to collect the information that is necessary to determine whether an apportionment may be authorized and the reasonable amount that may be awarded. Without this collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 192 on October 5, 2017, pages 46614 and 46615.

Affected Public: Individuals or Households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–26757 Filed 12–11–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0675]

Agency Information Collection Activity Under OMB Review: Agency Information Collection Activity: VetBiz Vendor Information Pages Verification Program

AGENCY: Center for Verification and Evaluation, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Center for Verification and Evaluation, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs,

Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0675'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0675'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Vetbiz Vendor Information Pages Verification Program, VA Form 0877.

OMB Control Number: 2900–0675.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Vetbiz Vendor Information Pages Verification Program is used to assist federal agencies in identifying small businesses owned and controlled by veterans and service-connected disabled veterans. The information is necessary to ensure that veteran owned businesses are given the opportunity to participate in Federal contracts and receive contract solicitations information automatically. VA will use the data collected to verify small businesses as veteran-owned or service disabled veteran-owned.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 133, on July 13, 2017, pages 32444 and 32445.

Affected Public: Business or other for profit.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–26754 Filed 12–11–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activity: Request for Approval of School Attendance and School Attendance Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 12, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0049'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Request for Approval of School Attendance (VA Forms 21–674 and 21–674c) and School Attendance Report (VA Form 21–674b).

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: Recipients of disability compensation, dependency and indemnity compensation, disability pension, and death pension, are entitled to benefits for eligible children between the ages of 18 and 23 who are attending school. VA Forms 21–674, 21–674b, and 21–674c, are used to confirm school attendance of children for whom VA compensation or pension benefits are being paid and to report any changes in entitlement factors; including marriages, a change in course of instruction, and termination of school attendance.

Affected Public: Individuals and households.

Total Estimated Annual Burden: 37,792 hours.

Estimated Burden per Respondent:

a. 15 minutes for VA Forms 21–674 and 21–674c.

b. 5 minutes for VA Form 21–674b.

Frequency of Response: Once.

Total Estimated Number of Respondents: 177,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–26756 Filed 12–11–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0623]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs Acquisition Regulation (VAAR), Special Notes

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, will

submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0623'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0623'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–91, Special Notes.

OMB Control Number: 2900–0623.

Type of Review: Extension of a currently approved information collection.

Abstract: VAAR clause 852.236–91, Special Notes requires VA to determine whether or not to award a contract to a firm that might involve or result in a conflict of interest. VA uses the information to determine whether additional contract terms and conditions are necessary to mitigate the conflict.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 44029 on September 20, 2017.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: VAAR Clause 852.236–91, Special Notes —778 hours.

Estimated Average Burden per Respondent:

a. VAAR Clause 852.236–91 for Qualified Data—.5 hour.

b. VAAR Clause 852.236–91 for Weather Data—1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR Clause 852.236–91 for Qualified Data—1516.

b. VAAR Clause 852.236–91 for Weather Data—20.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–26758 Filed 12–11–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No.2900–0503]

Agency Information Collection Activity: Veterans Mortgage Life Insurance Change of Address Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to inquire about a veteran's continued ownership of the property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. The information obtained is used in determining whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property. The information requested is required by law, 38 U.S.C. Section 2106.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 12, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0503'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Veterans Mortgage Life Insurance Change of Address Statement (VA Form 29–0563).

OMB Control Number: 2900–0503.

Type of Review: Reinstatement of a previously approved collection.

Abstract: The Veterans Mortgage Life Insurance Change of Address Statement solicits information needed to inquire about a veteran's continued ownership of the property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. The information obtained is used in determining whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property. The information requested is required by law, 38 U.S.C. Section 2106. This form expired due to high volume of work and staffing changes.

Affected Public: Individuals and households.

Estimated Annual Burden: 8 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2017–26755 Filed 12–11–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Tuesday,

No. 237 December 12, 2017

Part II

Environmental Protection Agency

40 CFR Part 80

Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2017–0091; FRL–9971–73–OAR]

RIN 2060–AT04

Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel produced or imported in the year 2018. Relying on statutory waiver authority that is available when projected cellulosic biofuel production volumes are less than the applicable volume specified in the statute, the EPA is establishing volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets. In this action, we are also establishing the applicable volume of biomass-based diesel for 2019.

DATES: This final rule is effective on February 12, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0091. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov*.

SUPPLEMENTARY INFORMATION: Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), leading to the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States (U.S) toward ''greater energy independence and security [and] to increase the production of clean renewable fuels.'' Today, nearly all gasoline used for transportation purposes contains 10 percent ethanol (E10), and on average diesel fuel contains more than 4 percent biodiesel and/or renewable diesel.[2]

The statute includes annual volume targets, and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that obligated parties must meet every year. In this action, we are establishing the annual percentage standards for cellulosic biofuel, biomass-based diesel (BBD), advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2018. We are also establishing the applicable volume of BBD for 2019.

Real-world challenges, in particular the slower-than-expected development of the cellulosic biofuel industry, has slowed progress towards meeting Congressional goals for renewable fuels. Given the nested nature of the standards, the shortfall in cellulosic biofuels has made the volume targets established by Congress for 2018 for advanced biofuels and total renewable fuels beyond reach. On July 21, 2017, EPA published a proposed rulemaking, containing proposed volume requirements for the RFS Program's four categories of renewable fuels that would apply in 2018 (and 2019 for BBD).[3] On August 1, EPA hosted a public hearing on the proposed rule, and EPA received over 235,000 written comments on the proposed rule as well. On October 4, 2017 (82 FR 46174), EPA published an ''Availability of Supplemental Information; Request for Further Comment,'' (hereinafter, ''October 4 document'') seeking further comment on the possible use of other waiver authorities in the final rule. Transcripts of the public hearing, along with all the comments received on the proposed rule and the October 4 document are available in the docket. After careful review of the information before us we are finalizing volume requirements for 2018 for cellulosic biofuel, advanced biofuel and total renewable fuel that are lower than the statutory targets, but nevertheless will ensure these renewable fuels will continue to play a critical role as a complement to our petroleum-based fuels. The final rule modifies the volume requirements slightly relative to the proposed rule, and in this notice we explain where and why such modifications were made.

In this action, we are finalizing volume requirements for cellulosic biofuel at the level we project to be available for 2018. We are using the ''cellulosic waiver authority'' provided by the statute to finalize volume requirements for advanced biofuel and total renewable fuel that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction (*i.e.,* the volumes we are finalizing for cellulosic biofuel, advanced biofuel, and total renewable fuel are all 6.71 billion gallons lower than the statutory volumes). We are not reducing volumes through use of the general waiver authority or the biomass-based diesel waiver authority.[4] We note that while we are reducing the required volume of total renewable fuel, advanced biofuel and cellulosic biofuel below statutory levels, the required volumes in this rule would achieve the implied statutory volumes for conventional biofuel[5] and non-cellulosic advanced biofuel[6] for 2018.

The final volume requirements for 2018 are shown in Table I–1 below. Relative to the levels finalized for 2017, the 2018 volume requirements for advanced biofuel and total renewable fuel are higher by 10 million gallons. EPA is reducing the advanced biofuel and total renewable fuel statutory volumes by the same amount as we are reducing the cellulosic biofuel volume. These reductions effectively preserve the implied statutory volumes for conventional renewable fuel and non-cellulosic advanced biofuels. We are establishing the volume requirement for BBD for 2019 at the proposed volume of 2.1 billion gallons.

TABLE I–1—FINAL VOLUME REQUIREMENTS [a]

	2018	2019
Cellulosic biofuel (million gallons)	288	n/a
Biomass-based diesel (billion gallons)	[b] 2.1	2.1
Advanced biofuel (billion gallons)	4.29	n/a

[1] 75 FR 14670, March 26, 2010.

[2] Average biodiesel and/or renewable diesel blend percentages based on EIA's October 2017 Short Term Energy Outlook (STEO).

[3] 82 FR 34206, July 21, 2017.

[4] See 42 U.S.C. 7545(o)(7)(A)(i–ii). See also the discussion of the general waiver authority in Section II.A.2. below.

[5] Throughout this final rule conventional biofuel refers to biofuel that qualifies as renewable fuel, but does not qualify as an advanced biofuel. RINs generated for conventional biofuels have a D code of 6.

[6] Throughout this final rule non-cellulosic advanced biofuel refers to biofuel that qualifies as advanced biofuel, but does not qualify as cellulosic biofuel. RINs generated for non-cellulosic advanced biofuels have a D code of 4 or 5.

TABLE I–1—FINAL VOLUME REQUIREMENTS [a]—Continued

	2018	2019
Renewable fuel (billion gallons)	19.29	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.
[b] The 2018 BBD volume requirement was established in the 2017 final rule (81 FR 89746, December 12, 2016).

A. Purpose of This Action

The national volume targets of renewable fuel that are intended to be achieved under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The statutory volume targets for 2018 are shown in Table I.A–1, along with the 2017 targets for comparison. The cellulosic biofuel and BBD categories are nested within the advanced biofuel category, which is itself nested within the total renewable fuel category. This means, for example, that each gallon of cellulosic biofuel or BBD that is used to satisfy the individual volume requirements for those fuel types can also be used to satisfy the requirements for advanced biofuel and total renewable fuel.

TABLE I.A–1—APPLICABLE VOLUME TARGETS SPECIFIED IN THE CLEAN AIR ACT

[Billion gallons] [a]

	2017	2018
Cellulosic biofuel	5.5	7.0
Biomass-based diesel	≥1.0	≥1.0
Advanced biofuel	9.0	11.0
Renewable fuel	24.0	26.0

[a] All values are ethanol-equivalent on an energy content basis, except values for BBD which are given in actual gallons.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. The percentage standards are calculated to ensure use in transportation fuel of the national ''applicable volumes'' of the four types of biofuel (cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel) that are set forth in the statute or established by EPA in accordance with the Act's requirements. The percentage standards are used by obligated parties (generally, producers and importers of gasoline and diesel fuel) to calculate their individual compliance obligations. Each of the four percentage standards is applied to the volume of non-renewable gasoline and diesel that each obligated party produces or imports during the specified calendar year to determine their individual volume obligations with respect to the four renewable fuel types. The individual volume obligations determine the number of Renewable Identification Numbers (RINs) of each renewable fuel type that each obligated party must acquire and retire to demonstrate compliance.

EPA is establishing the annual applicable volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2018, and for BBD for 2019.[7] Table I.A–2 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the percentage standards in this final rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Cellulosic biofuel	211(o)(7)(D)(i)	Required volume must be lesser of volume specified in CAA 211(o)(2)(B)(i)(III) or EPA's projected volume.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Biomass-based diesel	211(o)(2)(B)(ii) and (v)	Required volume for years after 2012 must be at least 1.0 billion gallons, and must be based on a review of implementation of the program, coordination with other federal agencies, and an analysis of specified factors.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
	211(o)(7)(E)	EPA in consultation with other federal agencies shall issue a temporary waiver of applicable volumes of BBD where there is a significant feedstock disruption or other market circumstance that would make the price of BBD fuel increase significantly. When exercising this authority, EPA is also authorized to reduce the applicable volumes of advanced and total renewable fuel by the same or a lesser volume.

[7] The 2018 BBD volume requirement was established in the 2017 final rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES—Continued

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Advanced biofuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
	211(o)(7)(E)	If applicable volume of biomass-based diesel is reduced, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume.
Total renewable fuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
	211(o)(7)(E)	If applicable volume of biomass-based diesel is reduced, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume.

As shown in Table I.A–2, the statutory authorities allowing EPA to modify or set the applicable volumes differ for the four categories of renewable fuel. Under the statute, EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in CAA section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected production volume. In Section III of this final rule, we present our analysis of cellulosic biofuel production and the applicable volume for 2018. This analysis is based primarily on the estimate of cellulosic biofuel production for 2018 conducted by the Energy Information Administration (EIA),[8] information reported to EPA through our Electronic Moderated Transaction System (EMTS), comments received on our proposed rule, and an evaluation of producers' production plans and progress to date following discussions with cellulosic biofuel producers.

With regard to BBD, CAA section 211(o)(2)(B) specifies the applicable volumes of BBD to be used in the RFS program only through year 2012. For subsequent years the statute sets a minimum volume of 1 billion gallons, and directs EPA, in coordination with the U.S. Departments of Agriculture (USDA) and Energy (DOE), to determine the required volume after review of implementation of the renewable fuels program and consideration of a number of factors. The BBD volume requirement must be established 14 months before the year in which it will apply. In the 2017 final rule we established the BBD volume for 2018. In Section VI of this preamble we discuss our assessment of statutory and other relevant factors and our final volume requirement for BBD for 2019, which has been developed in coordination with USDA and DOE. We are establishing an applicable volume of 2.1 billion gallons of BBD for use in deriving the BBD percentage standard in 2019. This volume is equal to the applicable volume of BBD established in a prior rulemaking for 2018, and would provide continued support to an industry that is a significant contributor to the pool of advanced biofuel, while at the same time setting the volume requirement in a manner anticipated to provide a continued incentive for the development of other types of advanced biofuel.

Regarding advanced biofuel and total renewable fuel, Congress provided several mechanisms through which the statutory targets could be reduced if necessary. If we reduce the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' We may also reduce the applicable volumes of any of the four renewable fuel types using the ''general waiver authority'' provided in CAA section 211(o)(7)(A) if EPA, in consultation with USDA and DOE, finds that implementation of the statutory volumes would severely harm the economy or environment of a State, region, or the U.S., or if there is inadequate domestic supply. We are also authorized under CAA section 211(o)(7)(E) to reduce the applicable volume of BBD established for 2018, and to make equal or lesser reductions in the 2018 applicable volumes of advanced biofuel and total renewable fuel, if we determine that there is a significant renewable feedstock disruption or other market circumstance that would make the price of BBD increase significantly. Sections II and IV of this final rule describe our use of the cellulosic waiver authority alone to derive the volumes of advanced biofuel and total renewable fuel that are below the statutory target volumes, and our assessment that the resulting volumes can be met. We believe that reductions in the statutory targets for cellulosic biofuel, advanced biofuel and total renewable fuel for 2018 are necessary. However, in light of our review of available information, we are making those reductions under the cellulosic waiver authority alone and are not reducing them further under other waiver authorities. Thus, the reductions in both the advanced and total

[8] ''Letter from EIA to EPA on 2018 projected volumes,'' available in docket EPA–HQ–OAR–2017–0091.

renewable fuel standards are directly attributable to the significant shortfall in cellulosic biofuel production, as compared to the statutory targets. A discussion of our consideration of the general waiver authority and biomass-based diesel waiver authority to further reduce the required biofuel volumes in 2018 can be found in Section V.

B. Summary of Major Provisions in This Action

This section briefly summarizes the major provisions of this final rule. We are establishing applicable volume requirements and associated percentage standards for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2018; for BBD we are establishing the percentage standard for 2018 and the applicable volume requirement for 2019.

1. Approach to Setting Volume Requirements

The approach we have taken in this final rule of using the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel by the same amount as the reduction in the required volume of cellulosic biofuel is the same approach as in our proposed rule, but is a departure from our approach to using the cellulosic biofuel waiver authority in previous years. In previous years we have used the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel volume requirements by a lesser amount than the reduction in the cellulosic biofuel volume requirement to allow reasonably attainable volumes of advanced biofuels to partially backfill for missing cellulosic biofuel volumes. However, the approach we have taken for 2018 does not result in a reduction in the volume requirement for non-cellulosic advanced biofuel. While the implied statutory volume for non-cellulosic advanced biofuel increased by 500 million gallons from 2017 to 2018, through our 2017 action we effectively required early use of approximately 0.5 billion gallons of non-cellulosic advanced volume that Congress envisioned would be first used in 2018.[9] Therefore, despite using the cellulosic waiver authority to reduce the volume of advanced biofuel by the same amount as cellulosic biofuel, the advanced biofuel volume requirement for 2018 is 10 million gallons higher than the advanced biofuel volume requirement in 2017. In this rule we are reducing all three volume requirements by the same amount after considering the greenhouse gas (GHG), energy security benefits, and anticipated costs of advanced biofuels that would occur at levels beyond those being finalized today.

Section II provides a general description of our approach to setting volume requirements in today's rule, including a review of the statutory waiver authorities and our consideration of carryover RINs. Section III provides our assessment of the 2018 cellulosic biofuel volume, based on a projection of production that reflects a neutral aim at accuracy. Sections IV and V describe our assessments of advanced biofuel and total renewable fuel, and consideration of the general and biomass-based diesel waiver authorities. Finally, Section VI provides our determination regarding the 2019 BBD volume requirement, and reflects an analysis of a set of factors stipulated in CAA section 211(o)(2)(B)(ii).

2. Cellulosic Biofuel

In the past several years the cellulosic biofuel industry has continued to make progress towards increased commercial scale production. Cellulosic biofuel production reached record levels in 2016 and has continued to grow throughout 2017, driven largely by compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas. Liquid cellulosic biofuels, while produced in much smaller quantities than CNG/LNG derived from biogas, have been produced at steady but relatively small volumes throughout 2017. In this rule we are establishing a cellulosic biofuel volume requirement of 288 million ethanol-equivalent gallons for 2018 based on our production projection. Our projection reflects consideration of a production estimate from EIA, RIN generation data available to EPA through EMTS, comments we received on the proposed rule, the information we have received regarding individual facilities' capacities, production start dates and biofuel production plans, a review of cellulosic biofuel production relative to EPA's projections in previous annual rules, and EPA's own engineering judgment. To project cellulosic biofuel production for 2018 we used the same basic methodology described in the proposed rule. However, we have used updated data to derive percentile values used in our production projection for liquid cellulosic biofuels and to derive the year-over-year change in the rate of production of CNG/LNG derived from biogas that is used in the projection for CNG/LNG. (See Section III for further detail on the methodology used to project cellulosic biofuel production.)

In estimating the volume of liquid cellulosic biofuel that will be made available in the U.S. in 2018, we considered all potential production sources by company and facility. This included facilities still in the commissioning or start-up phases, as well as facilities already producing some volume of cellulosic biofuel.[10] From this universe of potential liquid cellulosic biofuel sources, we identified the subset that is expected to produce commercial volumes of qualifying liquid cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel by the end of 2018. To arrive at projected volumes, we collected relevant information on each facility. We then developed projected production ranges based on factors such as progress towards construction and production goals, facility registration status, production volumes achieved, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel RINs. We also used this information to group these companies based on production history and to select a value within the aggregated projected production ranges that we believe best represents the most likely production volume from each group of companies in 2018.

For 2018, we are using an industry wide, rather than a facility-by-facility approach to project the production of CNG/LNG derived from biogas. We believe this approach is appropriate due to the mature state of this technology, the large number of facilities that are registered to produce cellulosic biofuel RINs for these fuels, and the fact that their volumes are likely to be affected more by market wide factors than individual company situations. Further discussion on our projection of cellulosic biofuel production in 2018, including the factors considered and the way these factors were used to determine our final cellulosic biofuel projection, can be found in Section III.

[9] The statutory advanced biofuel and cellulosic biofuel requirements for 2018 are 11.0 and 7.0 billion gallons respectively. This implies a non-cellulosic advanced biofuel statutory volume of 4.0 billion gallons. The statutory advanced biofuel and cellulosic biofuel requirements for 2017 are 9.0 and 5.5 billion gallons respectively. This implies a non-cellulosic advanced biofuel statutory volume of 3.5 billion gallons. In 2017 EPA established required volumes of advanced biofuel and cellulosic biofuel of 4.28 billion and 311 million gallons respectively, implying a non-cellulosic advanced biofuel volume of 3.97 billion gallons.

[10] Facilities primarily focused on research and development (R&D) were not the focus of our assessment, as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have produced.

3. Advanced Biofuel

We are finalizing required advanced biofuel requirements using the same approach used in the July proposed rulemaking. As was the case at the time of proposal, the conditions that compelled us to reduce the 2017 volume requirement for advanced biofuel below the statutory target remain relevant in 2018. As for 2017, we investigated the ability of volumes of non-cellulosic advanced biofuels to backfill unavailable volumes of cellulosic biofuel in 2018. We took into account the various constraints on the ability of the market to make advanced biofuels available, the ability of the standards we set to bring about market changes in the time available, the potential impacts associated with diverting biofuels and/or biofuel feedstocks from current use to the production of advanced biofuel used in the U.S., the fact that the biodiesel tax credit is currently not available for 2018, the proposed countervailing duties on imports of biodiesel from Argentina and Indonesia, as well as the cost of advanced biofuels. Based on these considerations we have decided to reduce the applicable volume of advanced biofuel by the same amount as we are reducing the applicable volume of cellulosic biofuels. This results in an advanced biofuel volume for 2018 that is 10 million gallons higher than the advanced biofuel volume for 2017. Although we determined that a small amount of reasonably attainable volumes of advanced biofuel could be used to backfill a portion of the missing cellulosic biofuel, for reasons described in Section IV, we are not exercising the discretion provided under the cellulosic waiver authority in a manner that would lead to that result.

As mentioned above, we are exercising our cellulosic waiver authority to reduce the statutory applicable volume of advanced biofuel to a volume requirement of 4.29 billion gallons for 2018. This applicable volume for 2018 is 10 million gallons higher than the applicable volume for advanced biofuel for 2017.

4. Total Renewable Fuel

Following our determination of the appropriate volume reduction for advanced biofuel for 2018 using the cellulosic waiver authority, we calculated what the total renewable fuel volume would be if we provide the same level of reduction using the cellulosic waiver authority. The resulting volume is 19.29 billion gallons.

5. Other Waiver Authorities

We have evaluated whether additional reductions in cellulosic biofuel, biomass-based diesel, advanced biofuel, or total renewable fuel are warranted for 2018 using either the general waiver authority or the BBD waiver authority and have determined that additional reductions are not warranted at this time.

6. 2019 Biomass-Based Diesel

In EISA, Congress specified increasing applicable volumes of BBD through 2012. Beyond 2012 Congress stipulated that EPA, in coordination with DOE and USDA, was to establish the BBD volume taking into consideration implementation of the program to date and various specified factors, providing that the required volume for BBD could not be less than 1.0 billion gallons. For 2013, EPA established an applicable volume of 1.28 billion gallons. For 2014 and 2015 we established the BBD volume requirement to reflect the actual volume for each of these years of 1.63 and 1.73 billion gallons.[11] For 2016 and 2017, we set the BBD volume requirements at 1.9 and 2.0 billion gallons respectively. Finally, for 2018 the BBD volume requirement was set at 2.1 billion gallons. We proposed to maintain this level for 2019.

Given current and recent market conditions, the advanced biofuel volume requirement is driving the production and use of biodiesel and renewable diesel volumes over and above volumes required through the separate BBD standard, and we expect this to continue. For 2019, EPA continues to believe that it would still be appropriate to provide a floor above the statutory minimum of 1 billion gallons to provide a guaranteed level of support for the continued production and use of BBD. However, we also believe that the volume of BBD supplied in previous years demonstrates that the advanced biofuel standard is capable of incentivizing additional supply of these fuels above the volume required by the BBD standard. Thus, based on a review of the implementation of the program to date and all the factors required under the statute, and in coordination with USDA and DOE, we are finalizing an applicable volume of BBD for 2019 at the proposed volume of 2.1 billion gallons.

[11] The 2015 BBD standard was based on actual data for the first 9 months of 2015 and on projections for the latter part of the year for which data on actual use was not available at the time.

7. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each producer and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. The percentage standards represent the ratio of the national applicable volume of renewable fuel volume to the national projected non-renewable gasoline and diesel volume less any gasoline and diesel attributable to small refineries granted an exemption prior to the date that the standards are set. The volume of transportation gasoline and diesel used to calculate the percentage standards was based on a letter provided to the EPA by EIA, as required by statute.[12] The percentage standards for 2018 are shown in Table I.B.7–1. Detailed calculations can be found in Section VII, including the projected gasoline and diesel volumes used.

TABLE I.B.7–1—FINAL 2018 PERCENTAGE STANDARDS

Cellulosic biofuel	0.159%
Biomass-based diesel	1.74%
Advanced biofuel	2.37%
Renewable fuel	10.67%

8. Assessment of Aggregate Compliance

By November 30 of each year we are required to assess the status of the aggregate compliance approach to land use restrictions under the definition of renewable biomass for both the U.S. and Canada. In today's action we are providing the final announcements for these administrative actions. As described in Section VIII.A, based on data provided by the USDA and using the methodology in place since 2014, we have estimated that U.S. agricultural land totaled approximately 376 million acres in 2017 and thus did not exceed the 2007 baseline acreage. This assessment means that the aggregate compliance provision can continue to be used in the U.S. for calendar year 2018.

On September 29, 2011, EPA approved the use of a similar aggregate compliance approach for planted crops and crop residue grown in Canada. As

[12] "Letter from EIA to EPA on 2018 projected volumes," available in docket EPA–HQ–OAR–2017–0091.

described in Section VIII.B, based on data provided by Canada, we have estimated that Canadian agricultural land totaled approximately 117.8 million acres in 2017 and thus did not exceed the 2007 baseline acreage. This assessment means that the aggregate compliance provision can continue to be used in Canada for calendar year 2018.

II. Authority and Need for Waiver of Statutory Applicable Volumes

The CAA provides EPA with the authority to enact volume requirements below the applicable volume targets specified in the statute under specific circumstances. This section discusses those authorities.

A. Statutory Authorities for Reducing Volume Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022, and for BBD through 2012, and authorized EPA to set volume requirements for subsequent years in coordination with USDA and DOE, and after consideration of specified factors. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements at a lower level than reflected in the statutory volume targets, and thus provided waiver provisions in CAA section 211(o)(7).

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, that EPA must reduce the applicable volume of cellulosic biofuel required to the projected production volume for that calendar year. In making this projection, EPA may not ''adopt a methodology in which the risk of overestimation is set deliberately to outweigh the risk of underestimation'' and must make a projection that ''aims at accuracy.'' *API* v. *EPA,* 706 F.3d 474, 479 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volumes for each year since 2010. As described in Section III.D, the projected volume of cellulosic biofuel production for 2018 is less than the 7.0 billion gallon volume target in the statute. Therefore, for 2018, we are setting the cellulosic biofuel volume requirement at a level lower than the statutory applicable volume, in accordance with this provision.

CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when it reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. For 2018, we are also reducing the applicable volumes of advanced biofuel and total renewable fuel under this authority.

The cellulosic waiver authority is discussed in detail in the preamble to the 2017 final rule and that discussion is incorporated by reference.[13] See also, *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy), *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel), and *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691 (D.C. Cir. 2017) (discussed below).

In *ACE,* the court evaluated EPA's use of the cellulosic waiver authority in the 2014–2016 annual rulemaking to reduce the advanced biofuel and total renewable fuel volumes for 2014, 2015, and 2016. There, EPA used the cellulosic waiver authority to reduce the standard for advanced biofuel to a volume that was reasonably attainable, and then provided a comparable reduction under this authority for total renewable fuel.[14] The Court of Appeals for the District of Columbia, relying on the analysis in *Monroe Energy,* reaffirmed that EPA enjoys ''broad discretion'' under the cellulosic waiver authority ''to consider a variety of factors—including demand-side constraints in the advanced biofuels market.'' [15] The Court noted that the only textual limitation on the use of the cellulosic waiver authority is that it cannot exceed the amount of the reduction in cellulosic biofuel.[16] The Court contrasted the general waiver authority under CAA section 211(o)(7)(A) and the biomass based diesel waiver authority under CAA section 211(o)(7)(E), which ''detail the considerations and procedural steps that EPA must take before waiving fuel requirements,'' with the cellulosic waiver authority, which identifies no factors regarding reductions in advanced and total renewable fuel other than the limitation that any such reductions may not exceed the reduction in cellulosic biofuel volumes.[17] The Court also concluded that the scope of EPA's discretionary authority to reduce advanced and total volumes is the same under the cellulosic waiver provision whether EPA is declining to exercise its authority to waive volumes, or choosing to do so.[18]

In this action we are reducing the statutory volume targets for advanced biofuels and total renewable fuel by equal amounts, as was our approach in using the cellulosic waiver authority in setting the 2014–2017 standards. EPA's reasoning for an equal reduction is explained in the 2017 final rule.[19] We have made a determination, as described in Section IV, that the applicable volume for advanced biofuels specified in the statute for 2018 cannot be achieved and we are exercising our cellulosic waiver authority to lower the applicable volume of advanced biofuel, and to provide an equal reduction in the applicable volume of total renewable fuel. In addition, we have determined that there is likely to be adequate supply to satisfy the total renewable fuel volume derived through applying an equal volume reduction as for advanced biofuel as discussed in Section V. Therefore, we have determined that no further reductions of the total renewable fuel volume requirement are necessary to address supply concerns.[20] The resulting volumes of advanced and total renewable fuel resulting from this exercise of the cellulosic waiver authority provide for an implied volume allowance for conventional biofuel of fifteen billion gallons, equal to that envisioned by Congress for 2018.

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on his own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that: (1) Implementation of the requirement would severely harm the

[13] See 81 FR 89752–89753 (December 12, 2016).

[14] See 80 FR 77433–34 (December 14, 2015).

[15] *ACE* at 730.

[16] *Id.* at 733.

[17] *Id.*

[18] *Id.*

[19] See 81 FR 89752–89753 (December 12, 2016). See also, 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015).

[20] As described in the Response to Comments document accompanying this action, we have also determined that additional waivers are not appropriate to address either severe economic or severe environmental harm.

economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply.

In the October 4 document, EPA sought comment on the possible use of the general waiver authority to reduce volumes of advanced biofuel and total renewable fuel for the 2018 standards below the levels proposed in the 2018 NPRM.[21] The October 4 document provided information on historic domestic production, imports, and exports of advanced biofuel, as well as additional information, and sought comment on how that information could inform a potential determination of inadequate domestic supply or severe economic harm.

Based on an evaluation of supply and potential economic impact of the volumes of advanced and total renewable fuel that result after use of the cellulosic waiver authority, comments from stakeholders, and as further discussed in Section V, EPA is not using the general waiver authority on the basis of severe economic or environmental harm or inadequate domestic supply to further reduce those volumes for 2018. EPA's response to comments addressing possible use of the general waiver authority are provided in a memorandum to the docket [22] and in the Response to Comments (RTC) document accompanying this action.

3. Biomass-Based Diesel Waiver Authority

Section 211(o)(7)(E)(ii) of the CAA provides that if EPA determines that there is a significant renewable feedstock disruption or other market circumstance that would make the price of BBD increase significantly, EPA shall, in consultation with the Secretary of Energy, and the Secretary of Agriculture, issue an order to reduce, for up to a 60-day period, the annual volume requirement for BBD by an appropriate quantity that does not exceed 15 percent. The statute also stipulates that EPA is authorized to reduce applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser volume than the reduction in BBD.

In the October 4 document, EPA sought comment on potential interpretations of this authority, as well as the potential use of the BBD waiver authority to reduce the 2018 volume requirement for BBD by as much as 315 million gallons, and to concurrently reduce the advanced biofuel and total renewable fuel volume requirements by as much as 473 million gallons. The notice provided information on the price of biodiesel in light of the expiration of the federal tax credit, and the potential imposition of new duties on imports of biodiesel from Argentina and Indonesia.

As described in the RTC document, EPA has determined that it would not be appropriate at this time to use the BBD waiver authority. Based on information provided in comments, as well its own analysis discussed in Section V, EPA believes that there is an insufficient basis to support a finding that the biomass based diesel prices currently in the marketplace, or reasonably anticipated in the immediate future, represent a ''significant'' increase in prices that would justify use of this waiver authority.

B. Treatment of Carryover RINs

Consistent with our approach in the 2013, 2014–16, and 2017 final rules, we have also considered the availability and role of carryover RINs in evaluating whether we should exercise our discretion to use the cellulosic waiver authority in setting the cellulosic, advanced, and total volume requirements for 2018. Neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising the cellulosic waiver authority.[23] As noted in the context of the rules establishing the 2014–16 and 2017 RFS standards, we believe that a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends.[24] Carryover RINs provide flexibility in the face of a variety of circumstances that could limit the availability of RINs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel.[25] On the other hand, carryover RINs can be used for compliance purposes, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[26] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE*.[27]

In the 2018 NPRM, EPA estimated that the size of the carryover RIN bank was then approximately 2.06 billion carryover RINs (including all D codes).[28] We proposed that in light of this relatively limited volume and the important functions provided by the RIN bank, that we would not set the volume requirements for 2018 in a manner that would intentionally lead to a drawdown in the bank of carryover RINs. In their comments on the 2018 NPRM, parties generally expressed two opposing points of view. Commenters representing obligated parties supported EPA's proposed decision to not assume a drawdown in the bank of carryover RINs in determining the appropriate volume requirements. These commenters reiterated the importance of maintaining the carryover RIN bank in order to provide obligated parties with necessary compliance flexibilities, better market trading liquidity, and a cushion against future program uncertainty. Commenters representing renewable fuel producers, however, contended that carryover RINs represent actual supply and should be accounted

[21] See 82 FR 46174 (October 4, 2017).

[22] ''Assessment of waivers for severe economic harm or BBD prices for 2018,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

[23] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid to show compliance for 12 months as of the date of generation. EPA implemented this requirement though the use of RINs, which can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although use of these carryover RINs is limited to 20% of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, if the volume of the collective carryover RIN bank is to remain unchanged from 2017 to 2018, then all of the vintage 2017 carryover RINs must be used for compliance in 2018, or they will expire. However, the same volume of 2018 RINs can then be ''banked'' for use in the next year.

[24] See 80 FR 77482–87 (December 14, 2015) and 81 FR 89754–55 (December 12, 2016).

[25] See id., and 72 FR 23900 (May 1, 2007).

[26] See 79 FR 49794 (August 15, 2013).

[27] *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014), *ACE* at 713.

[28] This was an increase of 520 million RINs from the previous estimate of 1.54 billion carryover RINs in the 2017 final rule. This increase in the carryover RIN bank compared to that projected in the 2017 final rule was not due to an underestimate by EPA in the amount of gasoline, diesel fuel, or ethanol that was consumed in 2016, but rather was driven almost entirely by a combination of over-compliance by biodiesel producers facing an expiring biodiesel tax credit at the end of 2016 and approximately 390 million RINs that small refineries granted a hardship exemption for 2016 were not required to retire.

for when establishing the annual volume standards. These commenters stated that not accounting for carryover RINs goes against Congressional intent of the RFS program, deters investment in next-generation biofuels, and ignores other programmatic buffers and flexibilities such as carry-forward deficits and small refinery hardship exemptions.[29]

1. Updated Projection of Carryover RIN Volume

Based on currently available information, our estimate of the carryover RIN bank has increased to 2.22 billion RINs, an increase of 160 million RINs from the previous estimate of 2.06 billion carryover RINs in the 2018 NPRM.[30] Part of the update considers small refinery hardship exemptions for 2016 that were granted since the 2018 NPRM was issued. These additional small refinery hardship exemptions led to the return to the RIN marketplace of approximately 125 million 2016 RINs that would otherwise have been required for compliance by the small refineries granted an exemption for 2016.

The carryover RIN volume is 11.5 percent of the total renewable fuel volume requirement that EPA is finalizing for 2018, which is less than the 20 percent maximum limit permitted by the regulations to be carried over for use in complying with the 2018 standards.[31] However, there remains considerable uncertainty surrounding this number for a number of reasons, including the possible impact of an action to address the remand in *ACE,* the possibility of additional small refinery exemptions, and the impact of 2017 RFS compliance on the bank of carryover RINs. In addition, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. Future enforcement actions could have similar results, and require that obligated parties and/or renewable fuel exporters settle past enforcement-related obligations in addition to the annual standards, thereby potentially creating demand for RINs greater than can be accommodated through actual renewable fuel blending in 2018. Collectively, the result of satisfying RFS obligations in 2017 and settling enforcement-related accounts could be an effective reduction in the size of the collective bank of carryover RINs. In light of these uncertainties, it is possible that the net result would be a bank of carryover RINs larger or smaller than 11.5 percent of the final 2018 total renewable fuel volume requirement.

2. EPA's Decision Regarding the Treatment of Carryover RINs

EPA has decided to maintain the proposed approach, and not set the volume requirements in the final rule with the intention or expectation of drawing down the current bank of carryover RINs. In addition, we do not believe that the availability of carryover RINs, together with the potential supply of renewable fuel in volumes higher than we are requiring though this final rule, should lead us to increase the volume requirements. In finalizing this approach, we carefully considered the comments received, including on the role of carryover RINs under our waiver authorities and the policy implications of our decision. While we have not assumed an intentional drawdown in the overall bank of carryover RINs owned by obligated parties collectively in establishing the volume requirements for 2018, we understand that some obligated parties may choose to sell or use all or part of their individual banks of carryover RINs. To the extent that they do, other obligated parties would be in a position to bank carryover RINs by using available renewable fuel or purchasing RINs representing such fuel, with the expected net result that the standards adopted in this action will have no effect on the size of the overall bank of carryover RINs that is owned collectively by obligated parties.[32]

We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volume objectives for advanced and total renewable fuels, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under the cellulosic waiver authority, and that the statute does not specify the extent to which EPA should require a drawdown in the bank of carryover RINs when it exercises this authority.

An adequate RIN bank serves to make the RIN market liquid. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be no RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards, undermining the market certainty so critical to the RFS program. However, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner (*i.e.,* one in which there are a sufficient number of reasonably available RINs for obligated parties seeking to purchase them), even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a needed programmatic buffer that both facilitates individual compliance and provides for smooth overall functioning of the program.[33] We have evaluated the volume of carryover RINs likely available for 2018, and we believe it is prudent not to intentionally draw down this volume of carryover RINs in establishing the 2018 standards. In addition, we have considered whether the current bank of carryover RINs, together with the additional supply of renewable fuel available in 2018 above the levels we are requiring be used, would justify reduced use of the cellulosic waiver authority. For the reasons described above and in Sections IV.C and D, we do not believe this to be the case.

Therefore, for the reasons noted above, and consistent with the approach we took in the 2014–2016 and 2017 final rules, we are making a determination that, under current circumstances, an intentional drawdown of the carryover RIN bank should not be assumed in establishing the 2018 volume requirements. In addition, we do not believe that the

[29] A full description of comments received, and our detailed responses to them, is available in the Response to Comments document in the docket.

[30] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2018 Final Rule,'' available in the docket.

[31] See 40 CFR 80.1427(a)(5).

[32] We expect that any renewable fuel produced in the U.S. that is not used to satisfy the 2018 renewable fuel standards will be exported, thereby not leading to an increase in the bank of 2018 RINs or carryover RINs.

[33] Here we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.

presence of the current bank of carryover RINs, together with additional potential supplies of renewable fuel in 2018, justifies reduced use of the cellulosic waiver authority in setting the 2018 advanced biofuel and total renewable fuel volumes. However, we note that we may or may not take a similar approach in future years; we will assess the situation on a case-by-case basis going forward, and take into account the size of the carryover RIN bank in the future and any lessons learned from implementing past rules.

III. Cellulosic Biofuel Volume for 2018

In the past several years the cellulosic biofuel industry has continued to make progress towards increased commercial-scale production. Cellulosic biofuel production reached record levels in 2016, driven largely by CNG and LNG derived from biogas. Production volumes have continued to increase in 2017.[34] While multiple large cellulosic ethanol facilities struggled to achieve production rates consistent with their nameplate capacity, several facilities consistently produced cellulosic ethanol from corn kernel fiber at a smaller scale during 2016 and 2017. This section describes our assessment of the volume of cellulosic biofuel that we project will be produced or imported into the U.S. in 2018, and some of the uncertainties associated with those volumes.

In the July NPRM, EPA proposed cellulosic volumes based on a methodology that differed in a couple of important ways from the approach we used in 2017. We proposed changes to the percentile values used to project liquid cellulosic biofuel production and a new industry-wide methodology for projecting the production of CNG/LNG derived from biogas. For this action, we are finalizing volumes for 2018 based on an approach that is similar, but not identical, to what we proposed. We discuss the changes we made from proposal to final below. In our RTC document, we respond to the multiple comments EPA received on the changes to the cellulosic projection methodology we proposed in July.

In order to project the volume of cellulosic biofuel production in 2018 we considered EIA's projection of cellulosic biofuel production,[35] comments received on the 2018 NPRM, data reported to EPA through EMTS, and information we collected through meetings with representatives of facilities that have produced or have the potential to produce qualifying volumes of cellulosic biofuel for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2018. There are two main parts to this projection. To project the range of potential production volumes of liquid cellulosic biofuel we used the same methodology as the methodology used in the 2017 final rule. However, we have adjusted the percentile values used to select a point estimate within a projected production range for each group of companies based on recent information, and with the objective of improving the accuracy of the projections. To project the production of cellulosic biofuel RINs for CNG/LNG derived from biogas we use the methodology discussed in the proposed rule with updated data. This methodology reflects the mature status of this industry, the large number of facilities registered to generate cellulosic biofuel RINs from these fuels, and EPA's continued attempts to refine its methodology to yield estimates that are as accurate as possible. This methodology is an improvement on the methodology that EPA used to project cellulosic biofuel production for CNG/LNG derived from biogas in the 2017 final rule. EPA has updated the list of potential cellulosic biofuel producers, projected facility start-up dates, facility capacities, production volumes, and other relevant information with the most recent information available. The methodologies used to project the production of liquid cellulosic biofuels and cellulosic CNG/LNG derived from biogas are described in more detail in Sections III.D–1 and III.D–2 below.

After a brief description of the statutory requirements in Section III.A, we discuss the companies the EPA reviewed in the process of projecting qualifying cellulosic biofuel production in the U.S. in 2018 in Section III.B. Section III.C discusses the projection of cellulosic biofuel production provided to EPA by EIA, and Section III.D discusses the methodologies used by EPA to project cellulosic biofuel production in 2018 and the resulting projection of 288 million ethanol-equivalent gallons.

A. Statutory Requirements

The volumes of renewable fuel to be produced and used as transportation fuel under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2)(B)(i)(III). The volume of cellulosic biofuel specified in the statute for 2018 is 7.0 billion gallons. The statute provides that if EPA determines, based on a letter provided to the EPA by EIA, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA shall reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[36]

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume, and we are required to make cellulosic waiver credits available.[37] Our consideration of the 2018 volume requirements for advanced biofuel and total renewable fuel is presented in Section IV.

B. Cellulosic Biofuel Industry Assessment

In order to project cellulosic biofuel production for 2018, we have tracked the progress of several dozen potential cellulosic biofuel production facilities. As we have done in previous years, we have focused on facilities with the potential to produce commercial-scale volumes of cellulosic biofuel rather than small research and development (R&D) or pilot-scale facilities. Larger commercial-scale facilities are much more likely to generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standard for 2018. The volume of cellulosic biofuel produced from R&D and pilot-scale facilities is quite small in relation to that expected from the commercial-scale facilities. R&D and demonstration-scale facilities have also generally not generated RINs for the fuel they have produced in the past. Their focus is on developing and demonstrating the technology, not producing commercial volumes. RIN generation from R&D and pilot-scale facilities in previous years has not contributed significantly to the overall number of cellulosic RINs generated.[38] We have therefore not

[34] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills; however, the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated MSW digesters, and the cellulosic components of biomass processed in other waste digesters.

[35] "Letter from EIA to EPA on 2018 projected volumes," available in docket EPA–HQ–OAR–2017–0091.

[36] The U.S. Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA* 706 F.3d 474, 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an "outcome-neutral methodology" aimed at providing a prediction of "what will actually happen."

[37] See 40 CFR 80.1456.

[38] While a few small R&D and pilot scale facilities have registered as cellulosic RIN generators, total

Continued

considered production from R&D and pilot-scale facilities in our projection of cellulosic biofuel production for 2018.

From this list of commercial-scale facilities we used information from EMTS, publicly available information (including press releases and news reports), comments on the 2018 NPRM, information from EIA, and information provided by representatives of potential cellulosic biofuel producers, to make a determination of which facilities are most likely to produce liquid cellulosic biofuel and generate cellulosic biofuel RINs in 2018. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2018. Both in our discussions with representatives of individual companies and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

As an initial matter, it is useful to review the success of EPA's recent cellulosic biofuel projections. EPA used a consistent methodology to project cellulosic biofuel production in the final three months of 2015 and in 2016 and 2017.[39] The record of actual production indicates that EPA's projection was lower than the actual number of cellulosic RINs made available in 2015,[40] and higher than the actual number of RINs made available in 2016.[41] While we currently only have data available through September 2017, it appears likely that the number of cellulosic RINs made available in 2017 will fall short of EPA's projection in our 2017 final rule.[42] The fact that the projections made using this methodology have been somewhat inaccurate, under-estimating the actual number of RINs made available in 2015 and over-estimating in 2016 and (most likely) 2017, reflects the inherent difficulty with projecting cellulosic biofuel production. It also emphasizes the importance of continuing to make refinements to our projection methodology in an effort to produce accurate projections.

EPA's projections of liquid cellulosic biofuel were higher than the actual volume of liquid cellulosic biofuel produced in both 2015 and 2016, and appear likely to be higher than actual liquid cellulosic biofuel production in 2017. We believe this recent data warrants a change to the percentile values used to project liquid cellulosic biofuel from the percentile values used in prior years in an effort to take into account the most recent data available and make the projections for 2018 more accurate. We are therefore adjusting the percentile values used to project liquid cellulosic biofuel production based on actual liquid cellulosic biofuel production in 2016 and through September 2017. Use of this updated data also results in different percentile values than we proposed to use for 2018. We believe that the use of the methodology (described in the 2018 NPRM and in Section III.D.1 below), with the adjusted approach to developing the percentile values used to project production volumes for liquid cellulosic biofuels, results in a projection that reflects a neutral aim at accuracy since it accounts for expected growth in the near future by using historical data that is free of any subjective bias.

In previous years, we used the same general methodology for CNG/LNG derived from biogas as for liquid cellulosic biofuel, but used different percentile values to project CNG/LNG derived from biogas and liquid cellulosic biofuels, reflecting the more established nature of the CNG/LNG industry relative to liquid cellulosic biofuel production. For 2018, EPA proposed using an industry-wide approach, rather than an approach that projects volumes for individual companies or facilities, to project the production of CNG/LNG derived from biogas. This updated approach reflects the fact that this industry is far more mature than the liquid cellulosic biofuel industry, and that there are a large number of facilities registered to generate cellulosic biofuel RINs from biogas, rendering a facility-by-facility analysis difficult and unnecessary for purposes of accuracy.[43] As described in Section III.D.2 below, EPA is instead calculating a year-over-year rate of growth in the renewable CNG/LNG industry by comparing RIN generation for CNG/LNG derived from biogas from October 2015–September 2016 to the RIN generation for these same fuels from October 2016–September 2017 (the most recent month for which data are available. We then apply this year-over-year growth rate to the total number of cellulosic RINs available for compliance from CNG/LNG in 2016 (the most recent year for which complete data are available), to estimate the production of CNG/LNG derived from biogas in 2018.[44]

The remainder of this section discusses the companies and facilities EPA expects to be in a position to produce commercial-scale volumes of cellulosic biofuel by the end of 2018 and describes in more detail the methodology EPA is using to project cellulosic biofuel production in 2018 (including a review of cellulosic biofuel production and the accuracy of the projection methodology in previous years).

1. Potential Domestic Producers

There are a number of companies and facilities[45] located in the U.S. that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale, or are anticipated to be in a position to do so

production from each of these facilities from 2011 through September 2017 has been less than 150,000 RINs. This is approximately 1% of all liquid cellulosic biofuel production through September 2017.

[39] This methodology is most recently described in the 2017 final rule. See 81 FR 89746, 89755 (December 12, 2016).

[40] EPA only projected cellulosic biofuel production for the final three months of 2015, since data on the availability of cellulosic biofuel RINs (D3+D7) for the first nine months of the year were available at the time the analyses were completed for the final rule.

[41] EPA projected that 123 million and 230 million cellulosic RINs would be generated in 2015 and 2016, respectively. The number of available cellulosic RINs in these years (RINs generated minus RINs retired for non-compliance reasons) was 140 and 190 million RINs. See ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016 (June 2017 Update),'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091 for more detail.

[42] Additional information on our current projection of cellulosic biofuel production for 2017 can be found in ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production,'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

[43] EPA received a large number of affidavits from companies that produce (or intend to produce) CNG/LNG derived from biogas as comments on our proposed rule. These affidavits are publicly available as part of the comments submitted by the Coalition for Renewable Natural Gas. EPA reviewed and considered the information contained in these affidavits in establishing the required volume of cellulosic biofuel for 2018. These affidavits confirmed that it was reasonable to believe that the relatively high year-over-year rate of growth used to project volumes of CNG/LNG derived from biogas for 2018 could be achieved based on a number of project expansions and new projects expected to begin producing CNG/LNG derived from biogas in 2018.

[44] Historically RIN generation for CNG/LNG derived from biogas has increased each year. It is possible, however, that RIN generation for these fuels in the most recent 12 months for which data are available could be lower than the preceding 12 months. We believe our methodology accounts for this possibility. In such a case, the calculated rate of growth would be negative.

[45] The volume projection from CNG/LNG producers does not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

at some time during 2018. The financial incentive provided by cellulosic biofuel RINs,[46] combined with the facts that to date nearly all cellulosic biofuel produced in the U.S. has been used domestically[47] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption and plan to use approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for any fuel produced by domestic commercial scale facilities. In order to generate RINs, each of these facilities must be registered with EPA under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the domestic companies and facilities considered in our assessment of potential cellulosic biofuel producers in 2018 have already successfully completed facility registration, and many have successfully generated RINs.[48] A brief description of each of the domestic companies (or group of companies for cellulosic CNG/LNG producers) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2018 can be found in a memorandum to the docket for this final rule.[49] General information on each of these companies or group of companies considered in our projection of the potentially available volume of cellulosic biofuel in 2018 is summarized in Table III.B.3–1 below.

2. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the U.S., there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2018. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used and other regulatory requirements are satisfied. These companies would therefore be eligible to register their facilities under the RFS program and generate RINs for any qualifying fuel imported into the U.S. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the U.S., demand for the cellulosic biofuels they produce is expected to be high in their own local markets.

EPA is charged with projecting the volume of cellulosic biofuel that will be produced or imported into the U.S.[50] For the purposes of this final rule we have considered all of the registered foreign facilities under the RFS program to be potential sources of cellulosic biofuel in 2018. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the U.S., cellulosic biofuel imports from foreign facilities not currently registered to generate cellulosic biofuel RINs are generally highly unlikely in 2018. For purposes of our 2018 cellulosic biofuel projection we have, with two exceptions (described below), excluded potential volumes from foreign cellulosic biofuel production facilities that are not currently registered under the RFS program.

Cellulosic biofuel produced at four foreign facilities (Ensyn's Renfrew facility, GranBio's Brazilian facility, and the CNG/LNG facilities Complexe Enviro Progressive Ltee and Saint-Thomas Biomethane Plant) generated cellulosic biofuel RINs for fuel exported to the U.S. in 2017; projected volumes from each of these facilities are included in our projection of available volumes for 2018. EPA has also included projected volume from two foreign facilities (Enerkem's Canadian facility and Ensyn's Port-Cartier, Quebec facility) that are not currently registered to generate cellulosic biofuel RINs under the RFS program. We believe that it is appropriate to include volume from these facilities in light of their proximity to the U.S., the proven technology used by these facilities, the volumes of cellulosic biofuel exported to the U.S. by the company in previous years (in the case of Ensyn), and the company's stated intentions to market fuel produced at these facilities to qualifying markets in the U.S. One additional foreign facility (Raizen's Costa Pinto) has registered as a cellulosic biofuel producer, but has not yet generated any cellulosic RINs. EPA attempted to contact representatives from this facility to inquire about their intentions to export cellulosic biofuel to the U.S. in 2018, but received no response. We have therefore not projected any cellulosic biofuel exports from this facility to the U.S. in 2018. All of the facilities included in EPA's cellulosic biofuel projection for 2018 are listed in Table III.B.3–1 below.

3. Summary of Volume Projections for Individual Companies

General information on each of the cellulosic biofuel producers (or group of producers in the case of producers of CNG/LNG derived from biogas and liquid cellulosic biofuel facilities using Edeniq's technology) that factored into our projection of cellulosic biofuel production for 2018 is shown in Table III.B.3–1. This table includes both facilities that have already generated cellulosic RINs, as well as those that have not yet generated cellulosic RINs, but are projected to do so by the end of 2018. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities. Each of these facilities (or group of facilities) is discussed further in a memorandum to the docket.[51] In addition to the facilities (or groups of facilities) discussed in Table III.B.3–1 below, EPA is aware of an additional technology that may be used to produce qualifying cellulosic biofuel in 2018. Multiple companies, in addition to Edeniq and Quad County Corn Processors, are working to

[46] According to data from Argus Media, the price for 2017 cellulosic biofuel RINs averaged $2.73 in 2017 (through September 2017). Alternatively, obligated parties can obtain a RIN value equivalent to a cellulosic biofuel RIN by purchasing an advanced (or biomass-based diesel) RIN and a cellulosic waiver credit. The price for 2017 advanced biofuel RINs averaged $1.00 in 2017 (through September 2017) while the price for a 2017 cellulosic waiver credit is $2.00.

[47] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

[48] Many of the facilities listed in Table III.B.3–1 are registered to produce cellulosic (D3 or D7) RINs with the exception of several of the producers of CNG/LNG derived from biogas, many of the facilities projected to produce cellulosic ethanol using Edeniq's technology, Enerkem's Edmonton facility, and Ensyn's Port-Cartier, Quebec facility.

[49] ''Cellulosic Biofuel Producer Company Descriptions (November 2017),'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

[50] EPA has consistently interpreted the ''projected volume of cellulosic biofuel production'' required in CAA section 211(o)(7)(D) to include volumes of cellulosic biofuel likely to be made available in the United States, including from both domestic production and imports (see 80 FR 77420 (December 14, 2015) and 81 FR 89746 (December 12, 2016)). We do not believe it would be reasonable to include in the projection all cellulosic biofuel produced throughout the world, regardless of likelihood of import to the United States, since volumes that are not imported would not be available to obligated parties for compliance and including them in the projection would render the resulting volume requirement and percentage standards unachievable.

[51] ''Cellulosic Biofuel Producer Company Descriptions (November 2017),'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

commercialize technology to convert corn kernel fiber to cellulosic ethanol at existing corn ethanol facilities. At this point, however, none of these other companies have successfully registered a facility to generate cellulosic RINs using their technology.[52] In light of the significant challenges associated with accurately and reliably determining the conversion of cellulosic feedstocks to biofuel in processes that simultaneously convert both cellulosic and non-cellulosic feedstocks, EPA has included volumes of cellulosic biofuel associated with the simultaneous conversion of corn kernel fiber and corn starch only in cases where the facilities intend to use a technology with a methodology for quantifying the volume of ethanol produced form the cellulosic fraction of corn fiber that has been approved by EPA (Quad County Corn Processors and facilities using Edeniq's technology).

TABLE III.B.3–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL BY 2018

Company name	Location	Feedstock	Fuel	Facility capacity (million gallons per year)[53]	Construction start date	First production[54]
CNG/LNG Producers[55].	Various	Biogas	CNG/LNG	Various	N/A	August 2014.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	October 2016.
Enerkem	Edmonton, AL, Canada.	Separated MSW	Ethanol	10[56]	2012	September 2017.[57]
Ensyn	Renfrew, ON, Canada.	Wood Waste	Heating Oil	3	N/A	2014.
Ensyn	Port-Cartier, QC, Canada.	Wood Waste	Heating Oil	10.5	June 2016	January 2018.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse.	Ethanol	21	Mid 2012	September 2014.
Poet-DSM	Emmetsburg, IA	Corn Stover	Ethanol	20	March 2012	4Q 2015.
QCCP	Galva, IA	Corn Kernel Fiber	Ethanol	4	Late 2013	October 2014.

C. Projection From the Energy Information Administration

Section 211(o)(3)(A) of the CAA requires EIA to ''. . . provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the U.S.'' EIA provided these estimates to EPA on October 11, 2017.[58] With regard to cellulosic biofuel, the EIA estimated that the available volume in 2018 would be 13 million gallons.

In their letter, EIA did not identify the facilities on which their estimate of cellulosic biofuel production was based. EIA did, however, indicate in their letter that they included neither estimates of cellulosic biofuel produced by foreign entities and imported into the U.S., nor estimates of cellulosic heating oil or CNG/LNG produced from biogas, which together represent approximately 96 percent of our projected cellulosic biofuel volume for 2017. When limiting the scope of our projection to the companies assessed by EIA, we note that while our volume projections are not identical, they are very similar. EPA projects approximately 10 million gallons of liquid cellulosic biofuel will be produced domestically in 2017 (when excluding heating oil, as EIA did in their estimate of cellulosic biofuel production). EIA did not provide detail on the basis of their projections, so we cannot say precisely why EPA and EIA's projections differ. We further note that if we used EIA's projections for domestic liquid cellulosic biofuel production without modification in place of our own assessment of these facilities the impact on the cellulosic biofuel standard overall for 2018 would be approximately 1%.[59]

D. Cellulosic Biofuel Volume for 2018

1. Liquid Cellulosic Biofuel

For our 2018 liquid cellulosic biofuel projection, we use the same general approach as we have in projecting these volumes in previous years. We begin by first categorizing potential liquid cellulosic biofuel producers in 2018 according to whether or not they have achieved consistent commercial scale production of cellulosic biofuel to date. Next we define a range of likely production volumes for 2018 for each group of companies. Finally, we use a percentile value to project from the established range a single projected production volume for each group of

[52] A significant issue that must be resolved to register a facility to produce cellulosic biofuel from corn kernel fiber at an existing ethanol production facility is the quantification of the volume of ethanol produced from cellulosic feedstocks rather than non-cellulosic feedstocks such as starch. Until these companies develop a methodology for quantifying cellulosic biofuel production that is approved by EPA we do not believe it is appropriate to include an estimate of cellulosic biofuel production from these facilities in our projection of cellulosic biofuel production in 2018.

[53] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility at the time of facility registration or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[54] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[55] For more information on these facilities see ''November 2017 Assessment of Cellulosic Biofuel Production from Biogas (2018),'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

[56] The nameplate capacity of Enerkem's facility is 10 million gallons per year. However, we anticipate that a portion of their feedstock will be non-biogenic MSW. RINs cannot be generated for the portion of the fuel produced from non-biogenic feedstocks. We have taken this into account in our production projection for this facility.

[57] This date reflects the first production of ethanol from this facility. The facility began production of methanol in 2015.

[58] ''Letter from EIA to EPA on 2018 projected volumes,'' available in docket EPA–HQ–OAR–2017–0091.

[59] If EPA increased our projection of liquid cellulosic biofuel produced in the United States in 2018 (excluding heating oil) to 13 million gallons to be consistent with EIA's projection our total projected volume of cellulosic biofuel would increase by 3 million gallons. This is approximately 1% of the total volume of cellulosic biofuel projected to be produced in 2018 (3/288 = 0.01).

companies in 2018. As explained below, however, we are using a different approach to selection of the appropriate percentile values for purposes of this rule than we have used in prior years. In this final rule we have used the most recent data available to determine which facilities are likely to produce liquid cellulosic biofuel in 2018, categorize the companies according to whether or not they have consistently produced commercial scale volumes of liquid cellulosic biofuels, adjust the projected production range for each group of companies, and adjust the percentile values used for each group of companies. This methodology is briefly described here, and is described in detail in memos to the docket.[60]

Consistent with our approach in previous years, we separated the list of potential producers of cellulosic biofuel (listed in Table III.B.3–1) into two groups according to whether or not the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation. We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data are available at the time our technical assessment was completed (October 2016–September 2017). For potential producers that have not yet generated any cellulosic RINs, the low end of the range is zero. For the high end of the range of production volumes for companies expected to produce liquid cellulosic biofuel we considered a variety of factors, including the expected start-up date and ramp-up period,[61] facility capacity. The projected range for the groups of companies considered in our 2018 cellulosic biofuel projection are shown in Tables III.D.1–1 and III.D.1–2 below.[62]

TABLE III.D.1–1—2018 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

Companies included	Low end of the range	High end of the range [a]
Facilities using Edeniq's technology (new facilities), Enerkem, Ensyn (Port Cartier facility)	0	47

[a] Rounded to the nearest million gallons.

TABLE III.D.1–2—2018 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

Companies included	Low end of the range [a]	High end of the range [a]
Facilities using Edeniq's technology (active facilities), Ensyn (Renfrew facility), Poet-DSM, GranBio, Quad County Corn Processors	7	24

[a] Rounded to the nearest million gallons.

After defining likely production ranges for each group of companies we next considered the percentile values to use in projecting a production volume for each group of companies. In the proposed rule, we used the 1st and 43rd percentile to project production from facilities that had not yet achieved consistent commercial scale production of liquid cellulosic biofuels and those that had, respectively, based on data indicating what percentile of production from within the 2016 projected range facilities included in our 2016 cellulosic biofuel projection actually achieved. However, for this final rule we are adjusting the percentile values used to project liquid cellulosic biofuel production from within the range of projected production values, by using data on actual liquid cellulosic biofuel production from both 2016 and 2017 (through September). We believe an adjustment to the percentile values used to generate a projected production volume from the range of potential production volumes for each group of facilities is warranted. EPA's estimates for liquid cellulosic biofuel exceeded actual production of liquid cellulosic biofuel in both 2015 and 2016.[63] Further, as discussed in the NPRM we are considering additional RIN generation data from 2017 that was not available for the NPRM in this final rule. While we currently only have cellulosic biofuel production data through September 2017, additional data available from months after the release of our proposed rule suggests that further changes to the percentile values used in the NPRM are likely to result in more accurate projections of cellulosic biofuel production in 2018. We believe that the adjusted percentile values used

[60] "November 2017 Liquid Cellulosic Biofuel Projections for 2018 CBI" and "Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production," memorandums from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

[61] As in our 2015–2017 projections, EPA calculated a high end of the range for each facility (or group of facilities) based on the expected start-up date and a six-month straight line ramp-up period. The high end of the range for each facility (or group of facilities) is equal to the value calculated by EPA using this methodology, or the number of RINs the producer expects to generate in 2018, whichever is lower.

[62] More information on the data and methods EPA used to calculate each of the ranges in these tables in contained in "November 2017 Liquid Cellulosic Biofuel Projections for 2018 CBI" memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091. Unlike in previous years, we have not shown the projected ranges for each individual company. This is because the high end of the range for some of these companies are based on the company's production projections, which they consider confidential business information (CBI). Additionally, the low end of the range for facilities that have achieved consistent commercial scale production is based on actual RIN generation data in the most recent 12 months, with is also claimed as CBI. EPA has included additional information on the calculations used to define the production ranges, including the production ranges for each individual company or facility, in a memo to the docket.

[63] EPA notes that once standards are set based on these projections, cellulosic biofuel RINs can be generated for either type of cellulosic biofuel. Cellulosic biofuel RINs generated for liquid biofuels and CNG/LNG derived from biogas can be used to satisfy an obligated party's cellulosic biofuel obligation. There are no separate standards for liquid and gaseous cellulosic biofuels.

in this final rule will improve the accuracy of the production projection and will further EPA's objective to project volumes with a ''neutral aim at accuracy.''

The projected ranges for liquid cellulosic biofuel production in 2016, along with the percentile values used to project a production volume within the calculated ranges the actual number of cellulosic RINs generated in 2016 that are available for compliance, and the percentile values that would have resulted in a projection equal to the actual production volume are shown in Table III.D.1–3 below.

TABLE III.D.1–3—PROJECTED AND ACTUAL LIQUID CELLULOSIC BIOFUEL PRODUCTION IN 2016

[Million gallons]

	Low end of the range	High end of the range	Percentile (2016 FRM)	Projected production	Actual production [64]	Actual percentile
New Facilities	0	76	25th	19	1.06	1st
Consistent Producers [65]	2	5	50th	4	3.28	43rd

Since the actual production in 2016 was lower than the projected production for both new facilities and consistent producers, we determined that for the purposes of our proposed rule it would be appropriate to adjust the percentiles to attempt to make them more accurate. To this end, EPA calculated the percentile values that would have resulted in accurate production projections in 2016 based on the actual number of cellulosic biofuel RINs generated for liquid cellulosic biofuels and available for compliance in 2016. These calculated percentile values are the 1st percentile for new facilities (replacing in the NPRM the 25th percentile used for 2016 and 2017) and the 43rd percentile for consistent producers (replacing in the NPRM the 50th percentile used for 2016 and 2017). These percentile values, however, do not reflect the updated production data EPA has from liquid cellulosic biofuel producers in 2017.

EPA currently only has data on cellulosic biofuel production in 2017 through the end of September. While we believe that any final assessment of the accuracy of a projection method cannot be made until complete data for the year are available, we nevertheless believe it is appropriate to consider data from 2017 and adjust the percentile values used in the final rule as appropriate. To calculate the percentile values that would have resulted in a projection equal to the actual production volume for 2017 we first need to project the volume of cellulosic biofuel that will be produced in the 4th quarter of 2017 for each group of facilities.[66] EPA projected cellulosic biofuel production in the 4th quarter of 2017 by first comparing cellulosic biofuel production in the 4th quarter of 2016 to the cellulosic biofuel production in the first 3 quarters of 2016. In 2016, cellulosic biofuel production in the 4th quarter (1.25 million gallons) was 40 percent of cellulosic biofuel production in the first 3 quarters (3.09 million gallons). We then used this factor, together with actual production data from the first 3 quarters of 2017 to project cellulosic biofuel production in the 4th quarter of 2017.[67] The projected ranges for liquid cellulosic biofuel production in 2017, along with the percentile values used to project a production volume within the calculated ranges, the actual number of cellulosic RINs generated in 2017 that are available for compliance, and the percentile values that would have resulted in a projection equal to the actual production volume are shown in Table III.D.1–4 below. Note that the percentile value that would have resulted in the projected volume of cellulosic biofuel in 2017 is negative, as the projected volume is lower than the low end of the range from the 2017 final rule.

TABLE III.D.1–4—PROJECTED AND ACTUAL LIQUID CELLULOSIC BIOFUEL PRODUCTION IN 2017

[Million gallons through September]

	Low end of the range	High end of the range	Percentile (2017 FRM)	Projected production (2017 FRM)	Projected production (2018 FRM) [68]	Actual percentile
New Facilities	0	33	25th	8	6.07	18th
Consistent Producers [69]	3.5	7	50th	5	2.85	−18th

The liquid cellulosic biofuel production data from 2017 indicates

[64] Actual production is calculated by subtracting RINs retired for any reason other than compliance with the RFS standards from the total number of cellulosic RINs generated.

[65] In the 2014–2016 Annual Rule EPA categorized Ensyn and Quad County Corn Processors as consistent cellulosic biofuel producers for 2016. All other companies were categorized as new facilities. This is in contrast to 2018, for which EPA has categorized additional facilities as consistent cellulosic biofuel producers.

[66] Unlike in the case of CNG/LNG derived from biogas, discussed in Section III.D.2 below, EPA can only use calendar years, rather than consecutive 12 month periods to evaluate the accuracy of the percentile values used in our projections in previous years. This is because the percentile values are used in conjunction with the calculated ranges to produce production estimates. The ranges were defined for the purpose of projecting cellulosic biofuel production in the context of our annual rules and therefore are specific to calendar years. Since production in any calendar year is not expected to be consistent (*i.e.,* with equal production volumes each month) it is not possible to use the projected ranges from two calendar years to generate a range for a 12 month period that spans two calendar years.

[67] More detail on these calculations can be found in ''November 2017 Liquid Cellulosic Biofuel Projections for 2018 CBI'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

[68] This number includes an updated projection of cellulosic biofuel production for each group of facilities in the 4th quarter of 2017 as described in the preceding paragraph. Note that the low end of the potential production range for companies that have achieved consistent commercial scale production (7 million gallons) is based on the most recent 12 months for which data is available (October 2016—September 2017) while the projected production number in this table is our

that adjustments to the percentile values used to project cellulosic biofuel production within the calculated range are appropriate. For this final rule EPA has projected cellulosic biofuel production from facilities that have not yet achieved consistent commercial scale production at the 10th percentile of the calculated range and projected cellulosic biofuel production from facilities that have achieved commercial scale production at the 12th percentile.[70] These percentiles are calculated by averaging the percentiles that would have produced cellulosic biofuel projections equal to the volumes produced by each group of companies in 2016 and 2017, as shown in Table III.D.1–5 below. We have not considered data from years prior to 2016, as prior to 2016 a different methodology was used to project available volumes of cellulosic biofuel. In determining the percentile values to use for 2018 we have decided to weight the observed actual percentile values from 2016 and 2017 equally. While the percentile value from 2017 represents the most recent data available, it is also dependent on a projection of the volume of cellulosic biofuel that will be produced in the 4th quarter of 2017. Conversely, the percentile values from 2016 are calculated using actual data for the full year, however this data is older and may not reflect the current state of cellulosic biofuel production technologies and commercial scale facilities as data from 2017. We believe that an average of these percentile values appropriately incorporate the data available to EPA at the time of this rulemaking to project liquid cellulosic biofuel production with a neutral aim at accuracy. We will continue to monitor the accuracy of our projection methodology and will use updated data to adjust the percentile values and/or other elements of our methodology as appropriate.[71]

TABLE III.D.1–5—PERCENTILE VALUES THAT WOULD HAVE PRODUCED ACCURATE PROJECTION IN 2016 AND 2017

	2016	2017	Average (Used to project volume in 2018)
New Facilities	1st	18th	10th
Consistent Producers	43rd	−18th	12th

Finally, we used these percentile values, together with the ranges determined for each group of companies discussed above, to project a volume for each group of companies in 2018. These calculations are summarized in Table III.D.1–6 below.

TABLE III.D.1–6—PROJECTED VOLUME OF LIQUID CELLULOSIC BIOFUEL IN 2018

[Million gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	0	47	10th	5
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production	7	24	12th	9
Total	N/A	N/A	N/A	14

[a] Volumes rounded to the nearest million gallons.

EPA also considered whether it would be appropriate to modify other individual components of the past methodology for projecting liquid cellulosic biofuel based on a narrow consideration of each factor, but we do not believe that such changes are warranted. Making the adjustment to the percentile values used in the methodology while keeping other components of the methodology constant should, we believe, provide an appropriate refinement of the methodology that reflects recent experience. We acknowledge, however, that using the calculated percentile values from previous years to project liquid cellulosic biofuel production in future years does not eliminate the possibility that actual production will differ from our projections. This is especially true for the liquid cellulosic biofuel industry, which is currently in the early stages of commercialization. Nevertheless, based on the record before us, we believe the ranges of projected production volumes for each company (or group of companies for those using the Edeniq technology) are reasonable, and that projecting overall production in 2018 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high or too low) of likely liquid cellulosic biofuel production in 2018 (14 million gallons).

2. CNG/LNG Derived From Biogas

For 2018, EPA is using a new methodology to project production of CNG/LNG derived from biogas used as transportation fuel. We believe a new

current projection for calendar year 2017 based on RIN generation data through September 2017.

[69] In the 2014–2016 Annual Rule, EPA categorized Ensyn and Quad County Corn Processors as consistent cellulosic biofuel producers for 2016. All other companies were categorized as new facilities. This is in contrast to 2018, for which EPA has categorized additional facilities as consistent cellulosic biofuel producers.

[70] The percentile value for 2018 for facilities that have not yet achieved consistent commercial scale production (10th percentile) is higher than the percentile used in the proposed rule (1st percentile) but lower than the percentile used in the 2017 rule (25th percentile). The percentile value for 2018 for facilities that have achieved consistent commercial scale production (12th percentile) is lower than both the percentile used in both the proposed rule (43rd percentile) and the percentile used in the 2017 rule (50th percentile).

[71] Additional information on the calculation of the percentile values for 2016 and 2017 can be found in ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production,'' memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091.

methodology is warranted for purposes of this rule for two primary reasons: the over-projection of CNG/LNG derived from biogas in 2016 (and the likely over-projection of CNG/LNG derived from biogas in 2017), and the relative maturity of the CNG/LNG industry relative to the liquid cellulosic biofuel industry. EPA's projection of the production of CNG/LNG derived from biogas in 2016 was 207 million ethanol-equivalent gallons. Actual production of cellulosic biofuel RINs for CNG/LNG derived from biogas that were available for compliance in 2016 was 185 million gallons, indicating that the approach we took to projecting CNG/LNG derived from biogas in 2016 resulted in an overestimate by 22 million ethanol-equivalent gallons (12 percent). Similarly, EPA's projection of the production of CNG/LNG derived from biogas in 2017 was 298 million ethanol-equivalent gallons. Actual production of cellulosic biofuel RINs for CNG/LNG derived from biogas that has been produced in 2017 (through the end of September, the most recent month for which data are available) is 151 million gallons. While data for all of 2017 are not available at this time, and despite the observed historical pattern of higher RIN generation for CNG/LNG derived from biogas in the latter months of the year relative to the earlier months of the year, the available data strongly suggests that actual RIN generation from CNG/LNG derived from biogas in 2017 is likely to fall short of our projections in the 2017 final rule. RIN generation of CNG/LNG derived from biogas from January 2017—September 2017 is 22 percent higher than RIN generation in the same months in 2016. In order to meet the projected volume for 2017 (298 million gallons), however, RIN generation in the remainder of 2017 would need to be 58 percent higher in 2017 than the total RIN generation from these fuels in 2016.

EPA received many comments on our proposed approach to projecting production of CNG/LNG derived from biogas in 2018. Some commenters critiqued EPA's calculation of a year-over-year rate of growth based on production during the first five months of 2017 (relative to production in the first five months of 2016) and suggested that EPA use updated production data in the final rule, or that EPA calculate the annual rate of growth based on comparisons of time periods no less than 12 months. Many commenters characterized EPA's proposed approach as inappropriately ''backwards looking,'' and claimed that while this approach may adequately project production from facilities that are currently producing CNG/LNG derived from biogas it did not adequately consider the new facilities the industry expects will begin production in 2018. Many of these commenters provided facility specific information on facilities capable of producing CNG/LNG derived from biogas in 2018 for both facilities that are currently producing CNG/LNG and those that expect to begin producing in 2018.[72] Many of these commenters requested that EPA use the facility by facility approach used by EPA in our 2017 final rule to project the production of CNG/LNG derived from biogas in 2018.

In this final rule EPA has used updated data in projecting the production of CNG/LNG derived from biogas, consistent with our stated intentions in the proposed rule and as requested by several commenters. At the time the analyses were performed for this final rule, EPA had data available through the end of September 2017. EPA has adjusted our calculated year-over-year rate of growth based on this new data. EPA also agrees with commenters who stated that it is more appropriate to calculate a year-over-year rate of growth using a full year's (12 months) worth of data, as this captures any seasonality and would (in future years) minimize the opportunity for producers of CNG/LNG derived from biogas to attempt to influence the projected growth rate for the next year by intentionally shifting production to particular months of the year.

For this final rule, EPA has calculated the year-over-year growth rate in CNG/LNG derived from biogas by comparing RIN generation from October 2016–September 2017 (the most recent 12 months for which data are available) to RIN generation in the 12 months that immediately precede this time period (October 2015–September 2016). These RIN generation volumes are shown in Table III.C.2–1 below.

TABLE III.D.2–1—GENERATION OF CELLULOSIC BIOFUEL RINS FOR CNG/LNG DERIVED FROM BIOGAS

[Million gallons]

RIN generation (October 2015–September 2016)	RIN generation (October 2016–September 2017)	Year-over-year increase
177.28	215.52	21.6%

EPA then applied this 21.6 percent year-over-year growth rate to the total number of 2016 cellulosic RINs generated for CNG/LNG that were available for compliance (185.14 million) to project the production of cellulosic RINs from these fuels in 2017, and then repeated the calculation to arrive at a projection for 2018. This methodology results in a projection of 273.6 million gallons of CNG/LNG derived from biogas in 2018.[73] We believe that projecting the production of CNG/LNG derived from biogas in this manner appropriately takes into consideration the actual recent rate of growth of this industry, and that this growth rate accounts for both the potential for future growth and the challenges associated with increasing RIN generation from these fuels in future years. While this methodology may not be appropriate to use once the projected volume of CNG/LNG derived from biogas approaches the total volume of CNG/LNG that is used as transportation fuel, this is not currently a constraint as our projection for 2018 is well below the total volume of CNG/LNG that is currently used as transportation fuel.[74] The comments

[72] The Coalition for Renewable Natural Gas collected and submitted a large number of affidavits from project owners and operators of facilities that are currently producing CNG/LNG derived from biogas, as well as those that anticipate beginning production in 2018. Many of these affidavits are publicly available in the docket, while others have claimed these submissions as confidential business information.

[73] To calculate this value, EPA multiplied the total number of 2016 RINs generated for CNG/LNG derived from biogas and available for compliance by 1.216 (representing a 21.6% year-over-year increase), and then multiplied the product by 1.216 a second time (to project the annual production volume in 2018, rather than 2017). The number 2016 of RINs generated for CNG/LNG derived from biogas and available for compliance (185.14) is based on EMTS data.

[74] EPA projects that 580 million ethanol-equivalent gallons of CNG/LNG will be used as transportation fuel in 2018 based on EIA's October 2017 Short Term Energy Outlook (STEO). To

submitted to EPA on our proposed rule contained information related to a number of production facilities expected to begin producing CNG/LNG derived from biogas in 2018 (and the final few months of 2017). Although commenters generally believed that this information supported a different approach for projecting production of CNG/LNG derived from biogas in 2018, we believe that these comments generally support our projection of CNG/LNG for 2018, insofar as they demonstrate that there is reason to expect that the significant rate of growth observed in the production of CNG/LNG derived from biogas in recent years will continue throughout 2018.

EPA disagrees with commenters who claimed that a facility-by-facility approach to projecting cellulosic RIN generation for CNG/LNG derived from biogas would necessarily result in a more accurate projection than an industry-wide projection methodology. We continue to believe that in case of nascent industries with a small number of participants, such as the liquid cellulosic biofuel industry, industry wide projection methodologies may be inappropriate as they do not capture the specific circumstances that may impact each participant. In industries where the number of participants is small, failing to adequately assess each individual participant can have a significant impact on the overall accuracy of industry projections. However, as the number of market participants grows the impact of any single participant on the overall performance of the industry decreases. In these cases, industry-wide projection methods are more accurate than a more individualized approach, especially as macro market and economic factors become more influential on total production than the success or challenges at any single facility.

Further, the accuracy of a facility by facility approach to projecting production is heavily dependent on the accuracy of the information available to EPA on the projected RIN generation volumes of each of the potential production facilities for 2018. Conversely, the market wide approach used by EPA in this final rule relies on actual RIN generation data, rather than individual company projections for 2018, to calculate a demonstrated rate of growth. As the number of potential production facilities increases, EPA's ability to verify the accuracy of the information we receive, and make a determination about the likelihood that the producers will produce CNG/LNG derived from biogas at the projected levels decreases. This is especially challenging in situations where there are a large number of potential producers that have previously overestimated the actual production from their facilities. In our 2017 final rule, EPA projected that 26 new facilities would begin producing CNG/LNG derived from biogas in 2017, largely based on information we received from the renewable CNG/LNG industry through the Coalition for Renewable Natural Gas. While we currently only have data available for the first 9 months of 2017, to date only two new facilities have generated cellulosic RINs for CNG/LNG derived from biogas in 2017. While additional new facilities may generate cellulosic RINs for CNG/LNG derived from biogas in the final 3 months of 2017, many projected that they would be producing cellulosic RINs by this point in the year, and it is highly unlikely that all 26 of these facilities will successfully generate cellulosic RINs by the end of 2017. The failure of these new facilities to generate cellulosic RINs in 2017, together with the over-projection by many of the facilities that have generated cellulosic RINs in 2017 resulted in the facility specific approach recommended by many commenters appearing to have significantly over-estimated the production of CNG/LNG in 2017. EPA has therefore used an alternative methodology based on actual production data in previous years, rather than production projections by individual facilities, to project production of CNG/LNG derived from biogas in this final rule. We believe the production of CNG/LNG derived from biogas has matured to a point where an industry wide projection methodology is more appropriate than a facility by facility approach, and is likely to result in a more accurate projection. We will monitor the success of this new approach, and will make appropriate modifications in the future if warranted.

We also disagree with commenters who claim that our proposed projection methodology does not appropriately account for new facilities expected to begin producing CNG/LNG derived from biogas in 2018. The methodology used by EPA in this final rule compared the total projection of CNG/LNG derived from biogas from October 2016–September 2017 to production in the 12 months that immediately precede this time period (October 2015–September 2016). The production increases observed in October 2016–September 2017, as compared to the preceding 12 months, were the result of both increased production from facilities that had previously produced CNG/LNG derived from biogas as well as production from facilities that had not previously produced this fuel. For example, from October 2015–September 2016 a total of 34 facilities generated cellulosic RINs for CNG/LNG derived from biogas. From October 2016–September 2017 the number of facilities that produced cellulosic RINs for CNG/LNG derived from biogas increased to 41. We believe, therefore, that while our projection methodology uses a growth rate based on historical data it adequately anticipates higher production volumes in future years, including both increased production from existing facilities as well as production from new facilities. In this way it is a forward, rather than backward looking methodology that satisfies our charge to project future cellulosic biofuel production in a reasonable manner, and with neutrality.

3. Total Cellulosic Biofuel in 2018

After projecting production of cellulosic biofuel from liquid cellulosic biofuel production facilities and producers of CNG/LNG derived from biogas, EPA combined these projections to project total cellulosic biofuel production for 2018. These projections are shown in Table III.D.3–1. Using the methodologies described in this section, we project that 288 million ethanol-equivalent gallons of cellulosic biofuel will be produced in 2018. We believe that projecting overall production in 2018 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high nor too low) of likely cellulosic biofuel production in 2018.

TABLE III.D.3–1—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2018

[Million gallons]

	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	5
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production	9

calculate this estimate, EPA used the Natural Gas Vehicle Use from the STEO Custom Table Builder (0.12 billion cubic feet/day in 2018). This projection includes all CNG/LNG used as transportation fuel from both renewable and non-renewable sources. EIA does not project the amount of CNG/LNG from biogas used as transportation fuel. To convert billion cubic feet/day to ethanol-equivalent gallons EPA used conversion factors of 1020 BTU per cubic foot of natural gas and 77,000 BTU of natural gas per ethanol-equivalent gallon.

TABLE III.D.3–1—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2018—Continued

[Million gallons]

	Projected volume [a]
CNG/LNG Derived from Biogas	274
Total	288

[a] Volumes rounded to the nearest million gallons.

Further discussion of the individual companies we believe will produce cellulosic biofuel and make it commercially available in 2018 can be found in a memorandum to the docket.[75]

IV. Advanced Biofuel and Total Renewable Fuel Volumes for 2018

The national volume targets for advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(I) and (II). Congress set annual renewable fuel volume targets that envisioned growth at a pace that far exceeded historical growth and, for years after 2011, prioritized that growth as occurring principally in advanced biofuels (contrary to previous growth patterns where most growth was in conventional renewable fuel, principally corn-ethanol). Congressional intent is evident in the fact that the portion of the total renewable fuel volume target in the statutory volume tables that is not required to be advanced biofuel is 15 billion gallons for all years after 2014, while the advanced volumes, driven by growth in cellulosic volumes, continue to grow through 2022 to a total of 21 billion gallons.

In this Section we discuss our use of the discretion afforded by the cellulosic waiver authority at CAA section 211(o)(7)(D)(i) to reduce volumes of advanced biofuel and total renewable fuel. We first discuss our assessment of advanced biofuel and the considerations, including comments received in response to the proposal and October 4 document, which have led us to conclude that the advanced biofuel volume target in the statute should be reduced by the full amount permitted under the cellulosic waiver authority. We then address total renewable fuel in the context of our interpretation, articulated in previous annual rulemakings, that advanced biofuel and total renewable fuel should be reduced by the same amount under the cellulosic waiver authority. In Section V we discuss our consideration of additional reductions for both advanced biofuel and total renewable fuel beyond those permitted under the cellulosic waiver authority, using other waiver authorities provided by the statute.

To begin, we have evaluated the capabilities of the market and are making a finding that the 11.0 billion gallons specified in the statute for advanced biofuel cannot be reached in 2018. This is primarily due to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 95 percent or more, and as described in Section III, we project that it will fall far short of the statutory target of 7.0 billion gallons again in 2018. In addition, although for the 2016 and 2017 standards we determined that the projected reasonably attainable supply of non-cellulosic advanced biofuel and other considerations justified establishing standards that included a partial backfill of the shortfall in cellulosic biofuel with advanced biofuel, for reasons described in this section we are reducing the advanced biofuel applicable volume by the full amount of the shortfall in cellulosic biofuel for 2018.

In previous years when exercising the cellulosic waiver authority to determine the required volume of advanced biofuel, we have taken into account the availability of advanced biofuels, their energy security and GHG impacts, and the apparent intent of Congress as reflected in the statutory volumes tables to substantially increase the use of advanced biofuels over time, as well as factors such as increased costs associated with the use of advanced biofuels and the environmental and food competition concerns raised by some commenters. In considering these factors, in those years, we have concluded that it was appropriate to set the advanced biofuel standard in a manner that would allow the partial backfilling of missing cellulosic volumes with non-cellulosic advanced biofuels. For purposes of this final rule we have again taken these factors into consideration, but rely more heavily on consideration of cost as a result of a stronger policy focus on the economic impacts of the RFS program to conclude that such backfilling with non-cellulosic advanced biofuel volumes should not be required in 2018. In other words, we are reducing the statutory volume target for advanced biofuel by the same amount as the reduction in cellulosic biofuel. This results in the non-cellulosic component of the advanced biofuel volume requirement being equal to the implied statutory volume of 4.00 billion gallons. We believe this new approach to balancing relevant considerations and exercising our discretion under the cellulosic waiver authority is permissible under the statute, and consistent with the principles articulated in *FCC* v. *Fox TV Stations* (556 US. 502, 514–15 (2009)), regarding circumstances when an agency may appropriately depart from prior policy. In making this final determination for 2018, we have considered comments on the appropriate balancing of factors under the cellulosic waiver authority that were provided by stakeholders in response to the proposal and the October 4 document, as discussed in the accompanying RTC document.

We note that the predominant non-cellulosic advanced biofuels available in the near term are advanced biodiesel and renewable diesel.[76] We expect a decreasing rate of growth in the availability of feedstocks used to produce these fuel types. In addition, we expect diminishing GHG benefits and higher per gallon costs as the required volumes of advanced biodiesel and renewable diesel increase. These outcomes are a result of the fact that the lowest cost and most easily available feedstocks are typically used first, and each additional increment of advanced biodiesel and renewable diesel requires the use of feedstocks that are incrementally more costly and/or more difficult to obtain. Moreover, to the extent that higher advanced biofuel requirements cannot be satisfied through growth in the production of advanced biofuel feedstocks, they would instead be satisfied through a re-direction of such feedstocks from competing uses. Parties that were formerly using these feedstocks are likely to replace the advanced biofuel feedstocks with the lowest cost alternatives, likely derived from palm or petroleum sources, leading to lower overall GHG emission benefits. There would also likely be market disruptions and increased burden associated with shifting feedstocks among the wide range of companies that are relying on them today and which have optimized their processes to use them. Higher

[75] "Cellulosic Biofuel Producer Company Descriptions (November 2017)," memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2017–0091. In the case of cellulosic biofuel produced from CNG/LNG and facilities using Edeniq's technology we have discussed the production potential from these facilities as a group rather than individually.

[76] While sugarcane ethanol can also contribute to the supply of advanced biofuel, in recent years, supply of sugarcane ethanol has been considerably lower than supply of advanced biodiesel or renewable diesel.

advanced biofuel standards could also be satisfied by diversion of foreign advanced biofuel from foreign markets, and there would likely be diminished benefits associated with such diversions. Taking these considerations into account, we believe, as discussed in more detail below, that we should not exercise our discretion under the cellulosic waiver authority to set the advanced biofuel volume requirement at a level that would lead to such diversions.

Furthermore, two other factors have added uncertainty regarding advanced biofuel volumes that are reasonably attainable and appropriate. The first is the fact that the tax credit for biodiesel has not been renewed, and if renewed could be in the form of a producer's tax credit rather than a blender's tax credit.[77] The second is the preliminary determination by the Department of Commerce that countervailing duties should be imposed on biodiesel imports from Argentina and Indonesia.[78]

We believe that the factors and considerations noted above are all appropriately considered in our exercise of the broad discretion provided under the cellulosic waiver authority, and that a comprehensive consideration of these factors supports our use of the authority. Some of the considerations discussed in this final rule are related to the availability of non-cellulosic advanced biofuels (*e.g.,* historic data on domestic supply, expiration of the biodiesel blenders' tax credit, potential imports of biodiesel in light of the Commerce Departments preliminary determination on countervailing duties on biodiesel imports from Argentina and Indonesia, potential imports of sugarcane ethanol, and anticipated decreasing growth in production of feedstocks for advanced biodiesel and renewable diesel), while others focus on the potential benefits and costs of requiring use of available volumes (*e.g.,* relative cost of advanced biofuels to the petroleum fuels they displace, GHG reduction benefits and energy security benefits). Having determined that we should not exercise the discretion afforded EPA under the cellulosic waiver authority so as to require the use of advanced biofuel volumes that would lead to diversion of advanced feedstocks from other uses or diversion of advanced biofuels from foreign sources, our analytical approach to identifying the appropriate volume requirement is to first identify volumes that we believe would be reasonably attainable in 2018 without such feedstock or fuel diversions, and then discuss whether or not other considerations, such as cost and GHG impacts, indicate that it would be appropriate to set the advanced biofuel volume requirement so as to require use of such volumes to partially backfill for missing cellulosic volumes.

The net impact of our exercise of the cellulosic waiver authority is that after waiving the cellulosic biofuel volume down to the projected available level, and applying the same volume reduction to the statutory volume target for advanced biofuel, the resulting volume requirement for advanced biofuel for 2018 is 10 million gallons more than the applicable volume used to derive the 2017 percentage standard. Furthermore, after applying the same reduction to the statutory volume target for total renewable fuel, the volume requirement for total renewable fuel is also 10 million gallons more than the applicable volume used to derive the 2017 percentage standard. The remainder of this section provides our justification for this approach to the determination of the volume requirements for advanced biofuel and total renewable fuel. Section V discusses our consideration of further reductions in either advanced biofuel or total renewable fuel using either the general waiver authority or the BBD waiver authority, and our justification for not applying such further reductions.

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

As described in Section II.A, when making reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority, the statute limits those reductions to no more than the reduction in cellulosic biofuel. As described in Section III.D, we are establishing a 2018 applicable volume for cellulosic biofuel of 288 million gallons, representing a reduction of 6,712 million gallons from the statutory target of 7,000 million gallons. As a result, 6,711 million gallons is the maximum volume reduction for advanced biofuel and total renewable fuel that is permissible using the cellulosic waiver authority. Use of the cellulosic waiver authority to this maximum extent would result in volumes of 4.29 and 19.29 billion gallons for advanced biofuel and total renewable fuel, respectively.[79]

TABLE IV.A–1—LOWEST PERMISSIBLE VOLUMES USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[million gallons]

	Advanced biofuel	Total renewable fuel
Statutory target	11,000	26,000
Maximum reduction permitted under the cellulosic waiver authority	6,712	6,712
Lowest 2018 volume requirement permitted using only the cellulosic waiver authority	4,288	19,288

We are authorized under the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel volumes ''by the same or a lesser'' amount as the reduction in the cellulosic biofuel volume. As discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority in instances where its use is authorized under the statute, since Congress did not specify factors that EPA must consider in determining whether to use the authority or what the appropriate volume reductions (within the range permitted by statute) should be. This broad discretion was affirmed in both *Monroe* and *ACE.*[80] Thus, EPA could potentially set the 2018 advanced biofuel standard at a level that is designed to partially backfill for the shortfall in cellulosic biofuel. As discussed below, doing so would result in perhaps an additional 110 million gallons of advanced biofuel. However,

[77] See American Renewable Fuel and Job Creation Act of 2017, S.944, 115th Cong. (2017).

[78] ''Commerce Finds Countervailable Subsidization of Imports of Biodiesel from Argentina and Indonesia,'' available in EPA docket number EPA–HQ–OAR–2017–0091.

[79] When expressing volumes in billion gallons, we use standard rounding methods to two decimal places, as done in previous annual standard-setting rulemakings. Volumes are sometimes shown in million gallons for clarity, but it is volumes in billion gallons that are used to calculate the applicable percentage standards.

[80] See *ACE* at 730–35.

based on our consideration of the factors described in more detail below, we are using the full extent of the cellulosic waiver authority in deriving volume requirements for 2018.[81]

B. Reasonably Attainable Volumes of Advanced Biofuel

It is appropriate to consider the availability of advanced biofuel, both to inform our exercise of the cellulosic waiver authority and to ascertain whether there might be an ''inadequate domestic supply'' justifying use of the general waiver authority. As the Court noted in *ACE,* EPA may consider demand-side considerations in addition to supply-side considerations when it assesses ''reasonably attainable'' volumes for purposes of its cellulosic waiver assessment. However, EPA may not consider demand-side factors in assessing whether there is an ''inadequate domestic supply'' that would justify use of the general waiver authority.[82] Our assessment of reasonably attainable volumes of advanced biofuel is described below.

In *ACE,* the Court noted that in assessing what volumes are ''reasonably attainable,'' EPA had considered the availability of feedstocks, domestic production capacity, imports, and market capacity to produce, distribute, and consume renewable fuel.[83] We are taking a similar approach for 2018, with the added consideration of the possibility that higher volume requirements would lead to ''feedstock switching'' or diversion of advanced biofuels from use in other countries, which we took into account in setting the 2017 volume requirements and, we believe, are appropriate considerations under the broad discretion provided by the cellulosic waiver authority.

As noted above, a higher advanced biofuel volume requirement has a greater potential to increase the incentive for switching advanced biofuel feedstocks from existing uses to biofuel production. Such market reactions could cause disruptions and/or price increases in the non-biofuel markets that currently use these feedstocks. Increasing the required volumes of advanced biofuels without giving the market adequate time to adjust by increasing supplies could also result in diversion of advanced biofuels from foreign countries to the U.S. without increasing total global volumes. We believe it is likely that the parties that formerly used advanced biofuel feedstocks would seek to replace the advanced biofuel feedstocks with the cheapest alternatives, likely products derived from palm oil or petroleum, rather than forgoing the use of oil-based products. Increasing volumes of advanced biofuels used in the U.S. in this way (by shifting the end use of advanced feedstocks to biofuel production and satisfying the current markets for these advanced feedstocks with non-qualifying or petroleum based feedstocks, or by simply shifting advanced biodiesel or renewable diesel from foreign to domestic use—referred to for simplicity as ''feedstock/fuel diversions'') would therefore likely not produce the GHG benefits that would otherwise be expected. We have decided not to set the advanced biofuel volume requirement at a level that would require such feedstock/fuel diversions. Our individual assessments of reasonably attainable volumes of advanced biofuels reflect this approach. That is, while we refer to them as ''reasonably attainable'' volumes for convenience, they represent those volumes that are not likely to lead to feedstock/fuel diversions. Greater volumes could likely be made available if such diversions were not of concern.

1. Imported Sugarcane Ethanol

The predominant available source of advanced biofuel other than cellulosic biofuel and BBD is imported sugarcane ethanol. In setting both the 2016 and 2017 standards, we determined that 200 million gallons of imported sugarcane ethanol would be reasonably attainable. In deriving this estimate of sugarcane ethanol, we attempted to balance indications of lower potential imports from recent data with indications that higher volumes were possible based on older data. We also pointed to the high variability in ethanol import volumes in the past (including of Brazilian sugarcane ethanol, the predominant form of imported ethanol, and the only significant source of imported advanced ethanol), increasing gasoline consumption in Brazil, and variability in Brazilian production of sugar as reasons that it would be inappropriate to assume that sugarcane ethanol imports would reach the much higher levels suggested by some stakeholders.

The data on 2016 ethanol imports suggests that we overestimated the volume of sugarcane ethanol imports for that year. Despite the fact that the applicable standards for 2016 were set prior to the beginning of 2016, and despite suggestions from UNICA[84] that 2016 imports could reach as high as 2 billion gallons, total ethanol imports only reached 34 million gallons.

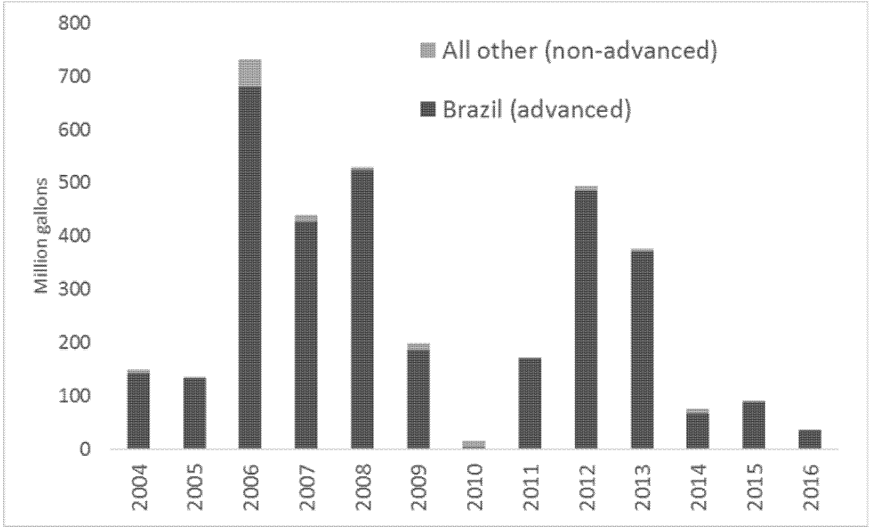
[81] We specify the volume requirements as billion gallons with two decimal places to be consistent with the volume targets as given in the statute. The only exception is for cellulosic biofuel which we specify in million gallons due to the substantial reduction from the statutory target. However, calculations are typically shown in million gallons for all four standards for clarity.

[82] See *ACE* at 734 and 696.

[83] *ACE* at 735–36.

[84] UNICA is the Brazilian Sugarcane Industry Association.

Figure IV.B.1-1
Historical Ethanol Imports[a]



Source: "US Imports of Fuel Ethanol from EIA," docket EPA-HQ-OAR-2017-0091.
[a] Imports from Brazil include those that are transmitted through the Caribbean Basin Initiative (CBI) and Central America Free Trade Agreement (CAFTA), and are produced from sugarcane. Imports from other countries are typically not produced from sugarcane and do not qualify as advanced biofuel.

Available data for imports in 2017 similarly suggests that imports are again likely to fall well below the 200 million gallons that we assumed when setting the 2017 standards; for January through August of 2017, total imports of sugarcane ethanol were 75 million gallons; by the end of 2017, total imports of sugarcane ethanol might be about 100 million gallons.[85] The combined experience for 2016 and 2017 suggests that 200 million gallons is too high for the purposes of projecting reasonably attainable volumes of advanced biofuel for 2018. At the same time, higher import volumes than those which occurred in 2016 are clearly possible, as reflected by imports seen in prior years. Taking all of these considerations into account, we are using 100 million gallons of imported sugarcane ethanol for the purposes of projecting reasonably attainable volumes of advanced biofuel for 2018. This level reflects a balancing of the information available to EPA at this time; both the lower import volumes that have occurred more recently with the higher volumes that are possible based on earlier years.

We note that the future projection of imports of sugarcane ethanol is inherently imprecise, and that actual imports in 2018 could be lower or higher than 100 million gallons. Factors that could result in import volumes below 100 million gallons include weather and harvests in Brazil, world ethanol demand and prices, and constraints associated with the E10 blendwall in the U.S. Also, global sugar consumption has continued to increase steadily, while production has decreased. If the trend continues, Brazilian production of sugar could increase, with a concurrent reduction in production of ethanol.[86] On the other hand, the world average price of sugar has been projected to remain relatively flat between 2016 and 2018, suggesting little change in sugar production and implying that ethanol production in Brazil might likewise remain unchanged.[87] After considering these factors, and in light of the high degree of variability in historical imports of sugarcane ethanol, we believe that 100 million gallons is a reasonable projection for 2018.

2. Biodiesel and Renewable Diesel

With regard to biodiesel and renewable diesel, there are many different factors that could potentially influence the *total* reasonably attainable volume of these fuels (including both advanced and non-advanced forms) used as transportation fuel or heating oil in the U.S.[88] These factors could include the availability of qualifying biodiesel and renewable diesel feedstocks, and the production capacity of biodiesel and renewable diesel facilities (both in the U.S. and internationally). The degree to which these and other factors may affect the total supply of both advanced and conventional forms of biodiesel and renewable diesel in 2018, is discussed in a memo to the docket.[89]

However, the primary considerations in our determination of the reasonably attainable volumes of *advanced* biodiesel and renewable diesel for 2018 are data on the use of advanced biodiesel and renewable diesel in previous years, the uncertain impact of the continued absence of the biodiesel tax credit and proposed tariffs on biodiesel from certain countries on biodiesel production and importation, the projected growth in production of advanced biodiesel and renewable

[85] ''Imports of ethanol 2011–2017,'' available in docket EPA–HQ–OAR–2017–0091.

[86] ''Sugar—World Markets and Trade,'' USDA, November 2016.

[87] ''Commodity Markets Outlook,'' World Bank Group, January 2017.

[88] For a further discussion of the factors that influence the availability of biodiesel and renewable diesel see Section V.B.2 of the preamble and a further discussion of these factors from the 2017 final rule (81 FR 89781–89789, December 12, 2016).

[89] ''Market impacts of biofuels,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

diesel feedstocks in 2018.[90] A review of the volumes of advanced biodiesel and renewable diesel used in previous years is especially useful in projecting the potential for growth in the production and use of such fuels, since for these fuels there are a number of complex and inter-related factors beyond simply the total production capacity for biodiesel and renewable diesel and ability to distribute these fuels (including the availability of advanced feedstocks, the expiration of the biodiesel tax credit, and other market-based factors) that are likely to affect the total supply. We also believe the likely growth in production of feedstocks used to produce these fuels is an important factor to consider. This is because the energy security and GHG reduction value associated with the growth in the use of advanced biofuels is greater when that growth is associated with an increase in advanced feedstock production, rather than a switching of existing advanced feedstocks from other uses or the diversion of advanced biodiesel and renewable diesel from foreign markets if the parties that previously used the advanced biofuel or feedstocks replace these oils with low cost palm or petroleum derived products, as we believe would likely be the case in 2018. Such feedstock switching or fuel diversion could result in unintended negative consequences, such as market disruption in other markets where such oils are used, which could offset some of the anticipated benefits of the production and use of advanced biofuels.

The volume of advanced biodiesel and renewable diesel projected to be available based on a consideration of these factors is less than the maximum volume of biodiesel and renewable diesel we believe could be produced (based solely on an assessment of the available production capacity) or consumed (based on an assessment of the ability of the market to distribute and use biodiesel and renewable diesel). Production capacity and the ability for the market to distribute and use biodiesel and renewable diesel are therefore not constraining factors in our assessment of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2018.

Before considering the projected growth in the production of qualifying feedstocks that could be used to produce advanced biodiesel and renewable diesel, it is helpful to review the volumes of biodiesel and renewable diesel that have been used in the U.S. in recent years. While historic data and trends alone are insufficient to project the volumes of biodiesel and renewable diesel that could be provided in future years, historic data can serve as a useful frame of reference in considering future volumes. Past experience suggests that a high percentage of the biodiesel and renewable diesel used in the U.S. (from both domestic production and imports) qualifies as advanced biofuel.[91] In previous years, biodiesel and renewable diesel produced in the U.S. has been almost exclusively advanced biofuel.[92] Imports of advanced biodiesel have increased in recent years, however, as seen in Table IV.B.2–1. Volumes of imported advanced biodiesel and renewable diesel have varied significantly from year to year, as they are impacted both by domestic and foreign policies, as well as economic factors.

TABLE IV.B.2–1—ADVANCED (D4 AND D5) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016
Domestic Biodiesel (Annual Change)	967 (N/A)	1,014 (+47)	1,376 (+362)	1,303 (−73)	1,253 (−50)	1,633 (+380)
Domestic Renewable Diesel (Annual Change)	58 (N/A)	11 (−47)	92 (+81)	155 (+63)	175 (+20)	221 (+46)
Imported Biodiesel (Annual Change)	44 (N/A)	40 (−4)	156 (+116)	130 (−26)	261 (+131)	561 (+300)
Imported Renewable Diesel (Annual Change)	0 (N/A)	28 (+28)	145 (+117)	129 (−16)	121 (−8)	170 (+49)
Exported Biodiesel and Renewable Diesel (Annual Change)	48 (N/A)	102 (+54)	125 (+23)	134 (+9)	133 (−1)	129 (−4)
Total (Annual Change)	1021 (N/A)	991 (−30)	1,644 (+653)	1,583 (−61)	1,677 (+94)	2,456 (+779)

[a] All data for 2011–2016 from EMTS. EPA reviewed all advanced biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the supply in each year.

[b] RFS required volumes for these years were not established until December 2015.

TABLE IV.B.2–2—CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016
Domestic Biodiesel (Annual Change)	0 (N/A)	0 (+0)	6 (+6)	1 (−5)	0 (+0)	0 (+0)
Domestic Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	0 (+0)
Imported Biodiesel (Annual Change)	0 (N/A)	0 (+0)	31 (+31)	52 (+21)	74 (+22)	113 (+39)

[90] Throughout this section we refer to advanced biodiesel and renewable diesel as well as advanced biodiesel and renewable diesel feedstocks. In this context, advanced biodiesel and renewable diesel refer to any biodiesel or renewable diesel for which RINs can be generated that satisfy an obligated party's advanced biofuel obligation (*i.e.,* D4 or D5 RINs). An advanced biodiesel or renewable feedstock refers to any of the biodiesel, renewable diesel, jet fuel, and heating oil feedstocks listed in Table 1 to § 80.1426 or in petition approvals issued pursuant to § 80.1416, that can be used to produce fuel that qualifies for D4 or D5 RINs. These feedstocks include, for example, soy bean oil; oil from annual cover crops; oil from algae grown photosynthetically; biogenic waste oils/fats/greases; non-food grade corn oil; camelina sativa oil; and canola/rapeseed oil (See pathways F, G, and H of Table 1 to § 80.1426).

[91] From 2011 through 2016 over 95% of all biodiesel and renewable diesel supplied to the U.S. (including domestically-produced and imported biodiesel and renewable diesel) qualified as advanced biodiesel and renewable diesel (9,372 million gallons of the 9,850 million gallons) according to EMTS data.

[92] From 2011 through 2016 over 99.9% of all the domestically produced biodiesel and renewable diesel supplied to the U.S. qualified as advanced biodiesel and renewable diesel (8,258 million gallons of the 8,265 million gallons) according to EMTS data.

TABLE IV.B.2–2—CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016—Continued

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016
Imported Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	53 (+53)	0 (−53)	106 (+106)	43 (−63)
Exported Biodiesel and Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	1 (+1)
Total (Annual Change)	0 (N/A)	0 (+0)	90 (+90)	53 (−37)	180 (+127)	155 (−25)

[a] All data for 2011–2016 from EMTS. EPA reviewed all conventional biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the supply in each year.

[b] RFS required volumes for these years were not established until December 2015.

Since 2011 the year-over-year changes in the volume of advanced biodiesel and renewable diesel in the U.S. have varied greatly, from a low of negative 61 million gallons from 2011 to 2012 to a high of 779 million gallons from 2015 to 2016. These changes were likely influenced by a number of factors such as the cost of biodiesel feedstocks and petroleum diesel, the status of the biodiesel blenders tax credit, growth in marketing of biodiesel at high volume truck stops and centrally fueled fleet locations, demand for biodiesel and renewable diesel in other countries, biofuel policies in both the U.S. and foreign countries, and the volumes of renewable fuels (particularly advanced biofuels) required by the RFS. This historical information does not indicate that the maximum previously observed increase of 779 million gallons of advanced biodiesel and renewable diesel would be reasonable to expect from 2017 to 2018, nor does it indicate that the low growth rates observed in other years represent the limit of potential growth in 2018. Rather, these data illustrate both the magnitude of the increases in advanced biodiesel and renewable diesel in previous years and the significant variability in these increases.

The historic data indicates that the biodiesel tax policy in the U.S. can have a significant impact on the supply of biodiesel and renewable diesel in any given year. While the biodiesel blenders tax credit has applied in each year from 2010–2016, it has only been in effect during the calendar year in 2011, 2013 and 2016, while other years it has been applied retroactively. The biodiesel blenders tax credit expired at the end of 2009 and was re-instated in December 2010 to apply retroactively in 2010 and extend through the end of 2011. Similarly, after expiring at the end of 2011, 2013, and 2014 the tax credit was re-instated in January 2013 (for 2012 and 2013), December 2014 (for 2014), and December 2015 (for 2015 and 2016). Each of the years in which the biodiesel blenders tax credit was in effect during the calendar year (2013 and 2016) resulted in significant increases in the supply of advanced biodiesel and renewable diesel over the previous year (653 million gallons and 779 million gallons respectively). However, following this large increase in 2013, the increase in the supply of advanced biodiesel and renewable diesel in 2014 and 2015 was minimal, only 33 million gallons from 2013 to 2015. This pattern is likely the result of both accelerated production and/or importation of biodiesel and renewable diesel in the final few months of 2013 to take advantage of the expiring tax credit as well as relatively lower volumes of biodiesel and renewable diesel production and import in 2014 and 2015 than would have occurred if the tax credit had been in place.[93]

We believe it is reasonable to anticipate a similar production pattern in 2016 through 2018 as observed in 2013 through 2015; that increases in the volumes of advanced biodiesel and renewable diesel will be modest in 2017 and 2018, following the significant increase in 2016. In 2013 the tax credit was in place through the entire year. This was followed by two years (2014 and 2015) in which the tax credit was not in place, but was eventually reinstated retroactively. Similarly, the tax credit in place through 2016, but at the time of this rulemaking not applicable to 2017 or 2018.[94] Available RIN generation data further supports this pattern. Very high volumes of advanced biodiesel and renewable diesel were supplied in the last quarter of 2016, likely driven by a desire to capture the expiring tax credit, while significantly smaller volumes of these fuels were supplied in the first quarter of 2017.[95] Data on advanced biodiesel and renewable diesel RIN generation in 2017 was available through September at the time the analyses were performed for this rulemaking. Our review of this data suggests that the generation of RINs for advanced biodiesel and renewable diesel in 2017 (through September) is slightly higher than RIN generation for these fuels during the same time period in 2016 (see Figure IV.B.2–1 below). Total 2016 RIN generation for advanced biodiesel and renewable diesel through September 2016 was 2.76 billion RINs, while total 2017 RIN generation for these fuels through September 2017 was 2.82 billion RINs. Total supply of advanced biodiesel and renewable diesel in 2016 was 2.46 billion gallons, suggesting that a total supply of approximately 2.5 billion gallons in 2017 (slightly higher than the volume supplied in 2016) is likely.[96] This is consistent with our projection of advanced biodiesel and renewable diesel in the 2017 rule (2.4 billion gallons) and expectations based on RIN generation patterns in previous years of modest increases in the supply of advanced biodiesel and renewable diesel in the years following the

[93] We also acknowledge that the fact that EPA did not finalize the required volumes of renewable fuel under the RFS program for 2014 and 2015 until December 2015 likely had an impact on the volume of advanced biodiesel and renewable diesel supplied in these years.

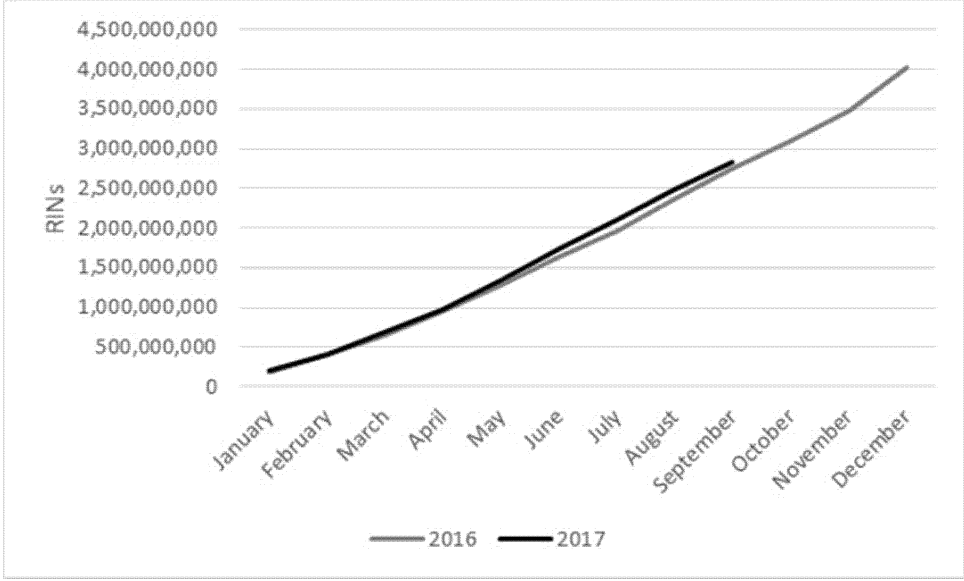
[94] At this time, it is uncertain whether the tax credit would be retroactively applied to 2017 or applied in any manner (prospectively or retroactively) in 2018.

[95] According to data on EPA's public Web site, RINs were generated for 823 million gallons of biomass-based diesel in the last quarter of 2016 while RINs were generated for 444 million gallons of biomass-based diesel in the first quarter of 2017. The vast majority of advanced biodiesel and renewable diesel qualifies as biomass-based diesel.

[96] The supply of advanced biodiesel and renewable diesel in 2016 accounts for all RIN generation, as well as all RIN retirements for reasons other than compliance with the annual standards. At this time, we do not have sufficient data to compare RIN retirements for reasons other than compliance with the annual standards in 2017 to those in 2016, as this data often lags RIN generation by several months. However, at this time we have no reason to believe RINs retired for reasons other than compliance with the annual standards in 2017 would be significantly different that retirements for the same reasons in 2017.

expiration of the biodiesel tax credit. This data also supports our expectation that the reasonably attainable volume of advanced biodiesel and renewable diesel in 2018 will reflect modest increases from the reasonably attainable volumes of these fuels in 2016 and 2017. It is not clear from this data whether or not higher RFS volume requirements alone would be sufficient to drive significant increases in the supply of advanced biodiesel and renewable diesel in the absence of a tax credit.

Figure IV.B.2-1
Cumulative RIN Generation for Advanced Biodiesel and Renewable Diesel (2016-2017)



After reviewing the historical supply of advanced biodiesel and renewable diesel and consideration of the possible impact of the expiration of the biodiesel tax credit (discussed above), EPA next considered the expected increase in the availability of advanced biodiesel and renewable diesel feedstocks in 2018. We acknowledge that an increase in the required use of advanced biodiesel and renewable diesel could be realized through a diversion of advanced feedstocks from other uses, or a diversion of advanced biodiesel and renewable diesel from existing markets in other countries. We perceive the net benefits associated with such increased advanced biofuel and renewable fuel volumes to be significantly less than the net benefits associated with the production of additional advanced biodiesel and renewable diesel with the use of newly-available advanced feedstocks due to the likelihood that parties that previously used advanced biofuel feedstocks will replace them with low cost palm or petroleum derived products. This is both because of the potential disruption and associated cost impacts to other industries resulting from feedstock switching, and a reduced GHG reduction benefit related to use of feedstocks for biofuel production that would have been used for other purposes and which must then be backfilled with other feedstocks with potentially greater GHG emissions. Similarly, increasing the supply of biodiesel and renewable diesel to the U.S. by diverting fuel that would otherwise have been used in other countries results in lesser GHG benefits than if the supply of these fuels was increased through additional biofuel production, especially if this diversion results in increased consumption of petroleum fuels in the countries that would have otherwise consumed the biodiesel or renewable diesel. By focusing our assessment of the potential growth in the reasonably attainable volume of biodiesel and renewable diesel on the expected growth in the production of advanced feedstocks (rather than the total supply of these feedstocks in 2018, which would include feedstocks currently being used for non-biofuel purposes), we are attempting to minimize the incentives for the RFS program to increase the supply of advanced biodiesel and renewable diesel through feedstock switching or diverting biodiesel and renewable diesel from foreign market to the U.S.

Advanced biodiesel and renewable diesel feedstocks include both waste oils, fats and greases and oils from planted crops. While we believe a small increase in supply of waste oils, fats, and greases may be possible in 2018, we believe this increase is limited as most of these oils, fats, and greases are already being recovered and used in biodiesel and renewable diesel production or for other purposes. Many of the planted crops that supply vegetable oil for advanced biodiesel and renewable diesel production are primarily grown for purposes other than providing feedstocks for biodiesel and renewable diesel, such as for livestock feed with the oil that is used as feedstock for renewable fuel production a co-product or by-product.[97] This is true for soy beans and corn, which are the two largest sources of feedstock from planted crops used for biodiesel production in the U.S.[98] We do not believe that the increased demand for soybean oil or corn oil will result in an

[97] For example, corn oil is a co-product of corn grown primarily for feed or ethanol production, while soy and canola oil are primarily grown as livestock feed.

[98] According to EIA data 6,096 million pounds of soy bean oil and 1,306 million pounds of corn oil were used to produce biodiesel in the U.S. in 2016. Other significant sources of feedstock were yellow grease (1,389 million pounds), canola oil (1,130 million pounds), white grease (578 million pounds), tallow (332 million pounds), and poultry fat (220 million pounds). Numbers from EIA's February 2017 Monthly Biodiesel Production Report. Available at *https://www.eia.gov/biofuels/biodiesel/production/archive/2016/2016_12/biodiesel.pdf.*

increase in soybean or corn prices large enough to induce significant changes in agricultural activity, at least for the relatively modest changes in advanced biodiesel and renewable diesel feedstock demand that we envision as a result of the RVOs we are finalizing in this rule. The vegetable oils produced are not the primary source of revenue for these crops, meaning that the planted acres of these crops are likely to be based on broader economic factors, rather than on demand for vegetable oil to produce biofuels or for other markets.

Increasing the demand for advanced biodiesel and renewable diesel beyond the volumes that could be made from the projected increase in the feedstocks used to produce these fuels would likely require diverting volumes of advanced biodiesel and renewable diesel (or the feedstocks used to produce these fuels) from existing markets to be used to produce biofuels supplied to the U.S. Increasing the short-term supply of advanced biodiesel and renewable diesel to the U.S. in this manner (simply shifting the end use of advanced feedstocks to biodiesel and renewable diesel production and meeting non-biofuel demand for these feedstocks with conventional renewable and/or petroleum based feedstocks or diverting advanced biodiesel and renewable diesel from foreign markets to the U.S.) may not advance the full GHG or energy security goals of the RFS program. In a worst case scenario, higher standards could cause supply disruptions to a number of markets as biodiesel and renewable diesel producers seek additional supplies of advanced feedstocks and the parties that previously used these feedstocks, both within and outside of the fuels marketplace, seek out alternative feedstocks. Similarly, advanced biodiesel and renewable diesel could be diverted to the U.S. from foreign countries and displaced with petroleum fuels. These actions could result in significant cost increases, for both biodiesel and renewable diesel as well as other products produced from renewable oils, with reduced GHG benefits.

We believe the most reliable source for projecting the expected increase in vegetable oils in the U.S. is USDA's World Agricultural Supply and Demand Estimates (WASDE). According to the September 2017 WASDE report, domestic vegetable oil production is expected to increase by 0.33 million metric tons in 2018, from 11.42 million metric tons in the 2016/2017 agricultural marketing year to 11.75 million metric tons in the 2017/2018 agricultural marketing year.[99] This quantity of vegetable oils (0.33 million metric tons) could be used to produce approximately 94 million gallons of advanced biodiesel or renewable diesel.[100]

In addition to virgin vegetable oils, we also expect increasing volumes of distillers corn oil [101] to be available for use in 2018. The WASDE report does not project distillers corn oil production, so EPA must use an alternative source to project the growth in the production of this feedstock. EPA is using the results of the World Agricultural Economic and Environmental Services (WAEES) model to project the growth in the production of distillers corn oil.[102] In assessing the likely increase in the availability of distillers corn oil from 2017 to 2018, the authors of the WAEES model considered the impacts of an increasing adoption rate of distillers corn oil extraction technologies at domestic ethanol production facilities, as well as increased corn oil extraction rates enabled by advances in this technology. The WAEES model projects that production of distillers corn oil in 2018 will increase by 316 million pounds, from 2,299 million pounds in agricultural marketing year 2016/2017 to 2,615 million pounds in agricultural marketing year 2017/2018. According to the WAEES model, this projected increase in the production of distillers corn oil, if devoted entirely to biofuel production, could be used to produce approximately 39 million gallons of biodiesel or renewable diesel in 2018. We believe that this is a reasonable projection. While the vast majority of the increase in advanced biodiesel and renewable diesel feedstocks produced in the U.S. from 2016 to 2017 is expected to come from virgin vegetable oils and distillers corn oil, increases in the supply of other sources of advanced biodiesel and renewable diesel feedstocks, such as biogenic waste oils, fats, and greases, may also occur. These increases, however, are expected to be modest, as many of these feedstocks that can be recovered economically are already being used for the production of biodiesel or renewable diesel, or in other markets. In total, we expect that increases in feedstocks produced in the U.S. are sufficient to produce approximately 150 million more gallons of advanced biodiesel and renewable diesel in 2018 relative to 2017.[103]

We have also considered the expected increase in the imports of advanced biodiesel and renewable diesel produced in other countries. In previous years, significant volumes of foreign produced advanced biodiesel and renewable diesel have been supplied to markets in the U.S. (see Table IV.B.2–1 above). These significant imports were likely the result of a strong U.S. demand for advanced biodiesel and renewable diesel, supported by the RFS standards, the LCFS in California, the biodiesel blenders tax credit, and the opportunity for imported biodiesel and renewable diesel to realize these incentives. At this time the impact of the expiration of the biodiesel blenders tax credit on the volumes of foreign-produced biodiesel and renewable diesel imported into the U.S., is highly uncertain. Additionally, in August 2017 the Department of Commerce announced a preliminary determination that it would be appropriate to place countervailing duties of 41 percent to 68 percent on biodiesel imported from Argentina and Indonesia. According to data from EIA, biodiesel imports from Argentina were 10,679 thousand barrels in 2016 (approximately 449 million gallons) and 5,601 billion barrels (approximately 235

[99] For this assessment we have assumed the vegetable oils produced in the 2017/2018 agricultural marketing year are the feedstocks most likely to be used to produce biodiesel and renewable diesel in 2018.

[100] To calculate this volume we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel. This is based on the expected conversion of soy oil (*http://extension.missouri.edu/p/G1990*), which is the largest source of feedstock used to produce advanced biodiesel and renewable diesel. We believe that it is also a reasonable conversion factor to use for all virgin vegetable oils.

[101] Distillers corn oil is non-food grade corn oil produced by ethanol production facilities

[102] For the purposes of this final rule, EPA relied on WAEES modeling results submitted as comments by the National Biodiesel Board on the 2018 final rule (Kruse, J., ''Implications of an Alternative Advanced and Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels'', August 21, 2017, World Agricultural Economic and Environmental Services (WAEES), EPA–HQ–OAR–2017–0091–3880).

[103] This projection includes a projected increase in the availability fats and oils other than virgin vegetable oils and distillers corn oil sufficient to produce approximately 15 million gallons of biodiesel. The WAEES model projects an increase in the quantity of ''other fats and oils'' (including inedible tallow, lard & white grease, yellow grease, brown grease, poultry fat, and other) sufficient to produce 31 million gallons of biodiesel. It is not clear from the WAEES model, however, if the projected increased use of other fats and oils as feedstock for biodiesel production is the result of increased production/collection of these feedstocks or diverting them from other uses. We therefore think our slightly more conservative projected increase in these feedstocks sufficient to produce 15 million gallons of biodiesel (without diverting feedstocks from existing uses) is appropriate. We note, however, using the slightly higher projection from the WAEES model (feedstock increase sufficient to produce 31 million gallons of biodiesel) has a very minimal impact on our assessment of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2018, and would have no impact on the required volume of advanced biofuel for 2018.

million gallons) through July 2017 (the most recent month for which data were available at the time of this assessment). Biodiesel imports from Indonesia were 2,554 thousand barrels in 2016 (approximately 107 million gallons), with no biodiesel imported in 2017 through July 2017. At this time, it is uncertain whether or not the preliminary determination by the Department of Commerce will be finalized, and it is uncertain what impact the finalization of these duties would have on overall imports of advanced biodiesel and renewable diesel to the U.S. In recent years imports of advanced biodiesel and renewable diesel have increased year-over-year, and absent these actions it may be reasonable to anticipate continued increases in the imported volume of these fuels. In light of this uncertainty, however, we do not believe it would be reasonable at this point to either increase or decrease our projection of the reasonably attainable volume of biodiesel and renewable diesel for 2018 as compared to the levels we projected for 2017.[104]

After a careful consideration of the factors discussed above, EPA has determined, for the purposes of this final rule, that approximately 2.55 billion gallons of advanced biodiesel and renewable diesel is reasonably attainable for use in our determination of the appropriate applicable volume of advanced biofuel to require for 2018. This volume is 150 million gallons higher than the volume of advanced biodiesel and renewable diesel determined to be reasonably attainable and appropriate for the purposes of deriving the advanced biofuel standard in 2017.

The 150 million gallon increase in advanced biodiesel and renewable diesel that we project will be reasonably attainable for 2018 represents a smaller annual increase in advanced biodiesel and renewable diesel than we assumed in deriving the 2017 advanced biofuel standard (approximately 300 million gallons over 2016 levels). We believe that this reflects that the circumstances presented with respect to 2018 are different from those we anticipated for 2017. The primary differences are a smaller projected increase in advanced feedstock production in the U.S., the continued absence of the biodiesel tax credit, and the preliminary determination placing duties on biodiesel imported from Argentina and Indonesia.

3. Other Advanced Biofuel

In addition to cellulosic biofuel, imported sugarcane ethanol, and advanced biodiesel and renewable diesel, there are other advanced biofuels that can be counted in the determination of reasonably attainable volumes of advanced biofuel for 2018. These other advanced biofuels include biogas, naphtha, heating oil, butanol, jet fuel, and domestically-produced advanced ethanol.[105] However, the supply of these fuels has been relatively low in the last several years.

TABLE IV.B.3–1—HISTORICAL SUPPLY OF OTHER ADVANCED BIOFUELS

[Million ethanol-equivalent gallons]

	CNG	Heating oil	Naphtha	Renewable diesel [a]	Domestic ethanol	Total
2013	26	0	3	64	23	116
2014	20	0	18	15	26	79
2015	0	1	24	8	25	58
2016	0	2	26	8	27	63

[a] Some renewable diesel generates D5 rather than D4 RINs as a result of being produced through co-processing with petroleum or being produced from the non-cellulosic portions of separated food waste or annual cover crops.

The downward trend over time in biogas as advanced biofuel with a D code of 5 is due to the re-categorization in 2014 of landfill biogas from advanced (D code 5) to cellulosic (D code 3).[106] Apart from biogas, total supply of advanced biofuel other than imported sugarcane ethanol has been relatively constant during 2014–2016. Based on this historical record, we find that 60 million gallons would be reasonably attainable in 2018.[107] This represents the approximate average of the two most recent years (2015 and 2016) for which complete data are available.

We recognize that the potential exists for additional volumes of advanced biofuel from sources such as jet fuel, liquefied petroleum gas (LPG), and liquefied natural gas (as distinct from compressed natural gas), as well as non-cellulosic biogas such as from digesters. However, since they have been produced in only de minimis and sporadic amounts in the past, we do not have a basis for projecting substantial volumes from these sources in 2018.[108]

4. Total Advanced Biofuel

The total volume of advanced biofuel that we believe is reasonably attainable in 2018 is the combination of cellulosic biofuel and the sources described above: imported sugarcane ethanol, biodiesel and renewable diesel which qualifies as BBD, and other advanced biofuels such as advanced biogas that does not qualify as cellulosic biofuel, heating oil, naphtha, domestic advanced ethanol, and advanced renewable diesel that does not qualify as BBD. Our assessment of the reasonably attainable volumes of these sources, discussed in the preceding sections, is summarized below. We note that the reasonably attainable volumes of each of these advanced biofuels cannot themselves be viewed as volume requirements. The volumes for each advanced biofuel type represent one significant factor that is considered in the analysis used to determine the reasonably attainable volumes of advanced biofuel. As discussed in more detail in a memorandum to the docket, there are many ways that the market could respond to the percentage standards we establish, including use of higher or lower volumes of these fuel types than

[104] We further note that there have been recent efforts to reinstate the biodiesel tax credit as a producers' tax credit, rather than a blenders tax credit. If the biodiesel tax credit were reinstated as a producers' tax credit it would not apply to foreign biodiesel producers, further limiting the likely supply of imported advanced biodiesel and renewable diesel.

[105] Advanced biofuel with a D code of 5.

[106] 79 FR 42128, July 18, 2014.

[107] For the purposes of determining the availability of total renewable fuel, we are using a volume of 40 million gallons of non-ethanol other advanced biofuel and 20 million gallons of advanced domestic ethanol (see discussion in Section V.B.2).

[108] For instance, no RIN-generating volumes of these other advanced biofuels were produced in 2016, and less than 1 mill gal total in prior years.

discussed in this section.[109] In addition, as discussed below, we do not believe it would be appropriate to require use of all volumes we have determined to be reasonably attainable.

TABLE IV.B.4–1—REASONABLY ATTAINABLE VOLUMES OF ADVANCED BIOFUEL IN 2018

[Million ethanol-equivalent gallons except as noted]

Cellulosic biofuel	288
Advanced biodiesel and renewable diesel (ethanol-equivalent volume/physical volume)	3,953/2,550
Imported sugarcane ethanol	100
Other advanced	60
Total advanced biofuel	4,401

C. Exercise of Cellulosic Waiver Authority for Advanced Biofuel

Based on the information presented above, we believe that 4.40 billion gallons of advanced biofuel would be reasonably attainable in 2018. This volume is 110 million gallons higher than the 4.29 billion gallons that would result from reducing the applicable volume of advanced biofuel by the same amount as the reduction to the statutory applicable volume of cellulosic biofuel (see Section III for a discussion of the cellulosic biofuel volume requirement for 2018). In exercising the cellulosic waiver authority in past years, we determined it was appropriate to require a partial backfilling of missing cellulosic volumes with volumes of non-cellulosic advanced biofuel we determined to be reasonably attainable and appropriate, notwithstanding the increase in costs associated with this decision.[110] However, this year we are balancing the various considerations in a different manner in setting the 2018 standards, placing a greater emphasis on cost considerations.[111]

In Section IV.E we present illustrative cost projections for sugarcane ethanol and soybean biodiesel in 2018, the two advanced biofuels that would be most likely to provide the marginal increase in volumes of advanced biofuel in 2018 in comparison to 2017. Sugarcane ethanol results in a cost increase compared to gasoline that ranges from $0.61–$1.56 per ethanol-equivalent gallon.[112] Soybean biodiesel results in a cost increase compared to diesel fuel that ranges from $0.95–$1.30 per ethanol-equivalent gallon.[113] The cost of these renewable fuels is high as compared to the petroleum fuels they displace. In light of these comparative costs, we believe it is reasonable to forgo the marginal benefit that might be achieved by establishing the advanced biofuel standard to require an additional 110 million gallons. See Section IV.E for a further discussion of the projected cost of this final rule.

Based on consideration of the volumes that may be reasonably attainable in 2018, along with a balancing of the costs and benefits associated with the option of setting the advanced biofuel standard at a level that would require use of all volumes that we have estimated could be reasonably attainable, we are exercising our cellulosic waiver authority to reduce advanced biofuel volumes to 4.29 billion gallons for 2018.[114] This advanced biofuel volume requirement for 2018 is similar to the requirement for 2017 when we allowed a portion of the shortfall in cellulosic biofuel to be backfilled with other advanced biofuel.

It should be noted that by exercising the full cellulosic waiver authority for advanced biofuel, the implied statutory volume target for non-cellulosic advanced biofuel of 4.0 billion gallons in 2018 is maintained. Although the implied volume for non-cellulosic advanced biofuel in the statute increases from 3.5 billion gallons in 2017 to 4.0 billion gallons in 2018, the applicable volume requirements for 2017 as finalized by EPA included an allowance for 4.0 billion gallons of non-cellulosic advanced biofuel, one year before envisioned by the statute. Through our 2017 action, we effectively required early use of the 0.5 billion gallon increment of non-cellulosic advanced volume that Congress envisioned would be first used in 2018. The net result of our action for 2018, after deciding that no further reductions beyond those obtained by exercise of the cellulosic waiver authority are appropriate (see Section V), is that the advanced biofuel volume requirement for 2018 is 10 million gallons higher than the advanced biofuel volume requirement for 2017, but the portion of this volume requirement that may be satisfied with non-cellulosic biofuels remains constant.

D. Exercise of Cellulosic Waiver Authority for Total Renewable Fuel

As discussed in Section II.A.1, we believe that the cellulosic waiver provision is best interpreted to provide equal reductions in advanced biofuel and total renewable fuel. We have consistently articulated this interpretation.[115] We believe this interpretation is consistent with the statutory language and best effectuates the objectives of the statute. If EPA were to reduce the total renewable fuel volume requirement by a lesser amount than the advanced biofuel volume requirement, we would effectively increase the opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory cap of 15 billion gallons.[116]

Applying an equal reduction of 6.71 billion gallons to both the statutory target for advanced biofuel and the statutory target for total renewable fuel results in a total renewable fuel volume of 19.29 billion gallons as shown in Table IV.A–1.[117] If we were to determine that there is a basis to exercise the general waiver authority or

[109] ''Market impacts of biofuels,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

[110] See, *e.g.,* Response to Comments Document for the 2014–16 Rule, pages 628–631, available at *https://www.epa.gov/sites/production/files/2015-12/documents/420r15024.pdf.*

[111] EPA notes that while the factors considered under the cellulosic waiver authority to reduce volumes could apply to volumes beyond the reduction in cellulosic biofuel, EPA is limited in the exercise of its cellulosic waiver authority to reductions up to the amount of the reduction in cellulosic biofuel. Any further reductions would require a determination under the general waiver authority that the volumes would result in severe economic or environmental harm, or that there is an inadequate domestic supply, as discussed in Section V below.

[112] Sugarcane ethanol results in a projected cost increase of $0.92–$2.34 per gasoline-equivalent gallon. The projected cost of gasoline in 2018 is $1.64 per gallon based on EIA Short-Term Energy Outlook, October 2017, Custom Table Builder, ''Refiner Wholesale Gasoline Price.''

[113] Soybean biodiesel results in a projected cost increase of $1.62–$2.22 per diesel-equivalent gallon. The projected cost of diesel in 2018 is $1.74 per gallon based on EIA Short-Term Energy Outlook, October 2017, Custom Table Builder, ''Diesel Fuel Refiner Wholesale Price.''

[114] EPA also considered the availability of advanced carryover RINs in determining whether reduced use of the cellulosic waiver authority would be warranted. For the reasons described in Section II.B, we do not believe this to be the case.

[115] For instance, see discussion in the final rules setting the 2013, 2014–2016, and 2017 standards: 78 FR 49809–49810, August 15, 2013; 80 FR 77434, December 14, 2015; 81 FR 89752–89753, December 12, 2016. We incorporate by reference the rationale for this interpretation that was articulated in these prior rules.

[116] Since the advanced biofuel volume requirement is nested within the total renewable fuel volume requirement, the statutory implied volume for conventional renewable fuel in the statutory tables can be discerned by subtracting the applicable volume of advanced biofuel from that of total renewable fuel. Performing this calculation with respect to the tables in CAA section 211(o)(2)(B) indicates a Congressional expectation that in the time period 2015–2022, advanced biofuel volumes would grow from 5.5 to 21 billion gallons, while the implied volume for conventional renewable fuel would remain constant at 15 billion gallons.

[117] EPA also considered the availability of carryover RINs in determining whether reduced use of the cellulosic waiver authority would be warranted. For the reasons described in Section II.B, we do not believe this to be the case.

the biomass-based diesel waiver authority, we could provide further reductions to the total renewable fuel volume. However, as described in more detail below in Section V, we believe that there is not sufficient justification for such further reductions in 2018.

E. Impacts of 2018 Standards on Costs

In this section, EPA presents its assessment of the illustrative costs of the final 2018 RFS rule. It is important to note that these illustrative costs do not attempt to capture the full impacts of this final rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these cost estimates. There are a number of different feedstocks that could be used to produce biofuels, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some renewable fuels may be cost competitive with the petroleum fuel they replace; however, we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

The annual standard-setting process encourages consideration of the RFS program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the full, long-term costs and benefits of the program. For the purposes of this final rule, other than the estimates of costs of producing a ''representative'' renewable fuel compared to cost of petroleum fuel, EPA did not quantitatively assess other direct and indirect costs or benefits of changes in renewable fuel volumes. These direct and indirect costs and benefits include infrastructure costs, investment, GHG emissions and air quality impacts, or energy security benefits, which all are to some degree affected by the annual standards. While some of these impacts were analyzed in the 2010 final rulemaking that established the current RFS program,[118] we have not analyzed these impacts for the 2018 volume requirements. We framed the analyses we have performed for this final rule as ''illustrative'' so as not to give the impression of comprehensive estimates.

1. Illustrative Cost Savings Associated With Reducing Statutory Cellulosic Volumes

To provide an illustrative estimate of the cost of the 2018 cellulosic biofuel requirements, EPA has compared the 2018 cellulosic biofuel volume requirements to the statutory volume that would be required absent the exercise of our cellulosic waiver authority under CAA section 211(o)(7)(D)(i).[119] As described in other sections of this final rule, we believe that the additional 6.71 billion gallons of cellulosic biofuel envisioned by the statute will not be produced in 2018. Therefore, estimating costs of this volume reduction is inherently challenging. However, we have taken the relatively straightforward methodology of multiplying the per-gallon costs associated with the volumes that would be required under this final rule by the amount of cellulosic renewable fuel that is being waived. This comparison results in a cost savings estimated to be $5.3–$15.9 billion.

To estimate the overall cost savings from waiving the cellulosic biofuel volumes, EPA has taken the following steps. First, EPA determined the magnitude of the volume reduction of cellulosic biofuel we are establishing in this rule, relative to the statutory volume. In this rule we are reducing the required volume of cellulosic biofuel by 6.71 billion gallons, with corresponding reductions in the advanced biofuel and total renewable fuel standards. Second, we estimated the per-gallon costs of producing cellulosic ethanol derived from corn kernel fiber that would be expected in complying with the standards. Third, the per-gallon costs of cellulosic biofuel from corn fiber were multiplied by 6.71 billion gallons.

While there may be growth in other cellulosic biofuel sources, for this exercise we believe it is appropriate to use corn kernel fiber as the representative cellulosic biofuel. The majority of liquid cellulosic biofuel in 2018 is expected to be produced using this technology, and application of this technology in the future could result in significant incremental volumes of cellulosic biofuel. In addition, as explained in Section III.D.2, we believe that production of the major alternative cellulosic biofuel—CNG/LNG derived from biogas—is limited to approximately 580 million gallons due to a limitation in the number of vehicles capable of using this form of fuel.[120]

EPA uses a ''bottom-up'' engineering cost analysis to quantify the costs of producing a gallon of cellulosic ethanol derived from corn kernel fiber. There are multiple processes that could yield cellulosic ethanol from corn kernel fiber. EPA assumes a cellulosic ethanol production process that generates biofuel using distiller's grains, a co-product of generating corn starch ethanol that is commonly dried and sold into the feed market as distillers dried grains with solubles (DDGS), as the renewable biomass feedstock. We assume an enzymatic hydrolysis process with cellulosic enzymes to break down the cellulosic components of the distiller's grains. This process for generating cellulosic ethanol is similar to approaches currently used by industry to generate cellulosic ethanol at a commercial scale, and we believe these costs estimates are likely representative of the range of different technology options being developed to produce ethanol from corn kernel fiber. We then compare the per-gallon wholesale costs of the cellulosic ethanol to the petroleum fuels that would be replaced.

These cost estimates do not consider taxes, retail margins, or other costs or transfers that occur at or after the point of blending (transfers are payments within society and are not additional costs). We do not attempt to estimate potential cost savings related to avoided infrastructure costs (*e.g.,* the cost savings of not having to provide pumps and storage tanks associated with higher-level ethanol blends). When estimating per-gallon costs, we consider the costs of gasoline on an energy equivalent basis as compared to ethanol, since more ethanol gallons must be consumed to go the same distance as gasoline due to the ethanol's lower energy content.

Table IV.E.1–1 below presents the cost savings associated with this final rule that are estimated using this approach.[121] The statutory cellulosic

[118] RFS2 Regulatory Impact Analysis (RIA). U.S. EPA 2010, Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. February 2010. Docket EPA–HQ–OAR–2009–0472–11332.

[119] EPA is also using its discretion to reduce the advanced biofuel and total renewable fuel requirements using the cellulosic waiver authority. This discretionary action is based partially on the costs of advanced biofuels and provides additional cost savings.

[120] To calculate this estimate, EPA used the Natural Gas Vehicle Use from the STEO Custom Table Builder (0.12 billion cubic feet/day in 2018). This projection includes all CNG/LNG used as transportation fuel from both renewable and non-renewable sources. EIA does not project the amount of CNG/LNG from biogas used as transportation fuel. To convert billion cubic feet/day to ethanol-equivalent gallons, EPA used conversion factors of 1020 BTU per cubic foot of natural gas and 77,000 BTU of natural gas per ethanol-equivalent gallon.

[121] Details of the data and assumptions used can be found in a Memorandum available in the docket entitled ''Cost Impacts of the Final 2018 Annual Renewable Fuel Standards'', Memorandum from

biofuel target in EISA for 2018 is seven billion gallons (ethanol equivalent). The cellulosic biofuel volume used in this rule to establish the 2018 cellulosic biofuel percentage standard is 288 million gallons. The amount of cellulosic biofuel being waived is 6.71 billion gallons. The per-gallon cost difference estimates for cellulosic ethanol ranges from $0.79–$2.37 per ethanol equivalent gallon.[122] Given that cellulosic ethanol production is just starting to become commercially available, the cost estimates have a significant range. Multiplying those per-gallon cost differences by the amount of cellulosic biofuel waived in this final rule, 6.71 billion gallons, results in approximately $5.3–$15.9 billion in cost savings.

TABLE IV.E–1—IMPACTS OF THE DIFFERENCE BETWEEN EISA VOLUMES FOR THE CELLULOSIC BIOFUEL STANDARD AND FINAL CELLULOSIC VOLUME IN 2018

	2018 EISA cellulosic volume standard	2018 Final cellulosic volume
Cellulosic Volume Required (Million Ethanol-Equivalent Gallons) [123]	7,000	288
Change in Required Cellulosic Biofuels (Million Gallons as Ethanol)		(6,712)
Cost Difference Between Cellulosic Corn Fiber-Derived Ethanol and Gasoline Per Gallon ($/EGE) [124]		$0.79–$2.37
Estimated Cost Difference in Meeting Cellulosic Biofuel Volume (Billion $) [125]		$(5.3)–$(15.9)

2. Illustrative Cost Analysis of Advanced Biofuels Using 2017 as the Baseline

We recognize that for the purpose of estimating the cost of the 2018 RFS volume requirements that a number of different scenarios using different ''baselines'' would be of interest to stakeholders. Therefore, in this section, we are also providing an illustrative cost analysis that shows the costs of the advanced biofuel standard as compared to those associated with the preceding year's standard, which as discussed in section IV.C. will lead to an increase of 10 million gallons of advanced biofuel in 2018 in comparison to 2017.[126]

EPA is providing an illustrative cost analysis for the increase in the overall advanced biofuel volume of 10 million ethanol equivalent gallons (as compared to 2017 volumes) using four different scenarios, assuming this increase in advanced biofuel volumes is comprised of: (1) cellulosic biofuel from CNG/LNG, (2) cellulosic biofuel from corn kernel fiber, (3) soybean oil BBD, or (4) sugarcane ethanol from Brazil. Showing the illustrative costs of soybean oil BBD and sugarcane ethanol is consistent with the methodology EPA developed for previous rulemakings. However, this discussion should not be interpreted as suggesting that the various renewable fuel types discussed are necessarily available in the marketplace. The availability of different types of renewable fuel is discussed in other sections of this preamble; in this section we assess costs as if the different fuel types are available, without intending to suggest that they are.

In previous annual RFS rules, EPA provided an illustrative cost estimate for the entire change in the total renewable fuel volume standard assuming it was satisfied with conventional (*i.e.,* non-advanced) corn ethanol. As there is no change in the 2018 implied conventional volume relative to the 2017 volume, all of the changes in both the advanced and total renewable fuel volumes are properly attributed to advanced biofuel.

As described earlier, we are focusing on the wholesale level in our cost scenarios, and do not consider taxes, retail margins, additional infrastructure, or other costs or transfers that occur at or after the point of blending. More background information on this section, including details of the data sources used and assumptions made for each of the scenarios, can be found in a memorandum available in the docket.[127]

Table IV.E.2–1 below presents estimates of per energy-equivalent gallon costs for producing soybean biodiesel, Brazilian sugarcane ethanol, CNG/LNG derived from landfill biogas, and cellulosic ethanol derived from corn fiber relative to the petroleum fuels they replace at the wholesale level. For each of the four scenarios, these per-gallon costs are then multiplied by the 10 million ethanol-equivalent gallon increase in the 2018 advanced standard relative to the previous 2017 standard to obtain an overall cost estimate.

TABLE IV.E.2–1—ILLUSTRATIVE COSTS OF THE 10 MILLION GALLON INCREASE IN THE ADVANCED BIOFUEL VOLUME REQUIREMENT IN 2018 RELATIVE TO THE 2017 VOLUME REQUIREMENT

Soybean Biodiesel Scenario	
Cost Difference Between Soybean Biodiesel and Petroleum Diesel Per Gallon ($/EGE) [128]	$0.89–$1.22
Annual Change in Overall Costs (Million $) [129]	$9–$12
Brazilian Sugarcane Ethanol Scenario	
Cost Difference Between Sugarcane Ethanol and Gasoline Per Gallon ($/EGE)	$0.61–$1.56

Michael Shelby, Dallas Burkholder, and Aaron Sobel to EPA Docket EPA–HQ–OAR–2017–0091.

[122] For the purposes of the cost estimates in this section, EPA has not attempted to adjust the price of the petroleum fuels to account for the impact of the RFS program, since the changes in the renewable fuel volume are relatively modest. Rather, we have simply used the wholesale price projections for gasoline and diesel as reported in EIA's October 2017 STEO.

[123] Overall fuel volumes may not match due to rounding.

[124] Approximate costs are rounded to the cents place.

[125] Approximate costs are rounded to the first decimal place.

[126] There is also an increase of 10 million gallons in the 2018 applicable volume of total renewable fuel as compared to the 2017 volume. However, in light of the nested standards, that increase is entirely attributable to the increase in the advanced volume.

[127] ''Cost Impacts of the Final 2018 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel to EPA Docket EPA–HQ–OAR–2017–0091.

TABLE IV.E.2–1—ILLUSTRATIVE COSTS OF THE 10 MILLION GALLON INCREASE IN THE ADVANCED BIOFUEL VOLUME REQUIREMENT IN 2018 RELATIVE TO THE 2017 VOLUME REQUIREMENT—Continued

Annual Change in Overall Costs (Million $)	$6–$16
CNG/LNG Derived from Landfill Biogas Scenario	
Cost Difference Between CNG/LNG Derived from Biogas and Natural Gas ($/EGE) [130]	$(0.04)–$0.07
Annual Change in Overall Costs (Million $)	$(0.4)–$0.7
Corn Fiber-Derived Ethanol Scenario	
Cost Difference Between Cellulosic Corn Fiber-Derived Ethanol and Gasoline Per Gallon ($/EGE)	$0.79–$2.37
Annual Change in Overall Costs (Million $)	$8–$24

Based on this illustrative analysis of four separate hypothetical scenarios, EPA estimates that the costs for changes in the advanced fuel volumes compared to 2017 could range from $(0.4)–$24 million in 2018. It is important to note that these illustrative costs do not take into consideration the benefits of the program.[131] For the purpose of this annual rulemaking, we have not quantified benefits for the 2018 standards. For example, we do not have a quantified estimate of the GHG or energy security benefits for a single year (*e.g.,* 2018). Also, there are impacts that are difficult to quantify, such as rural economic development and employment changes from more diversified fuel sources, that are not quantified in this rulemaking.

V. Consideration of Additional Reductions Using Other Waiver Authorities

As discussed in previous sections, we are reducing the statutory volume target for cellulosic biofuel to reflect the projected production volume of that fuel type in 2018, and we are reducing both advanced biofuel and total renewable fuel by the maximum permissible amount authorized under the cellulosic waiver authority in CAA section 211(o)(7)(D)(i).

We have also considered whether it would be appropriate to provide further reductions for these renewable fuel categories pursuant to the general waiver authority in CAA section 211(o)(7)(A), or for these renewable fuel categories and the 2018 BBD using the BBD waiver authority in CAA section 211(o)(7)(E). We have concluded that further reductions in volumes using any of these other waiver authorities are not warranted. We note that in the October 4 **Federal Register** document we solicited comment on possible new interpretations of the general waiver authority for inadequate domestic supply and severe economic harm and of the biomass-based diesel waiver authority.[132] We find it unnecessary to resolve whether to adopt such interpretations at this point in time because under any approach we would find exercise of these waiver authorities not appropriate based on the record before us.

As a result, we are finalizing advanced biofuel and total renewable fuel volume requirements resulting from the exercise of the cellulosic biofuel waiver authority alone, and we are not modifying the 2018 BBD applicable volume of 2.1 billion gallons established through a prior rulemaking. The implied volume for conventional renewable fuel (calculated by subtracting the advanced volume from the total volume) will be 15.0 billion gallons, consistent with the statutory target provided in the statute for 2018.

A. Inadequate Domestic Supply

On July 21, 2017, we proposed to reduce the 2018 statutory volume targets for advanced biofuel and total renewable fuel by the maximum permissible amount using the cellulosic waiver authority, and not to reduce these volumes further using other authorities. However, we requested comment on the possible additional use of the general waiver authority or other authorities to provide further reductions in the proposed volume requirements.[133] To evaluate the possibility for using the general waiver authority on the basis of a finding of inadequate domestic supply, we considered the projected volumes of renewable fuel that can be supplied to refiners, importers, and blenders in 2018 from both domestic production and imports. In addition, consistent with the approach identified for consideration in the October 4 document, we considered the projected volumes of renewable fuel that can be supplied to refiners and blenders solely from domestic production. Under either approach we conclude a waiver is not warranted.

In Section III we discussed our projection that 288 million gallons of cellulosic biofuel will be made available in 2018. In Section IV we described our assessment that about 4.40 billion gallons of advanced biofuel would be reasonably attainable in 2018 from both domestic production and imports but that, after considering a number of factors, such as the potential for feedstock/fuel diversions and cost of advanced biofuel, we would exercise our discretion to use the full cellulosic waiver authority to reduce the applicable volume to 4.29 billion gallons.[134] As a result, we do not anticipate an inadequate domestic supply of advanced biofuels to meet a volume requirement of 4.29 billion gallons for advanced biofuel, when both domestic production and imports are considered.

Having determined that there will not be an inadequate domestic supply of advanced biofuel, we further considered whether there may be an inadequate domestic supply to satisfy the portion of the total renewable fuel volume requirement that can be satisfied with non-advanced (conventional) renewable fuel. After application of the full cellulosic waiver authority to the advanced biofuel and total renewable

[128] Per-gallon cost differences compare illustrative biofuels to their petroleum fuel counterparts on an ethanol gallon equivalent (EGE) basis, accounting for the differences in energy content between fuels, and then multiplied by the total RINs needed to meet the change in volume obligations.

[129] Overall costs may not match per-gallon costs times volumes due to rounding.

[130] CNG/LNG derived from biogas and natural gas costs are compared on an ethanol gallon equivalent (EGE) energy content basis.

[131] The small negative cost estimate is likely a result of the methodology undertaken for these illustrative costs.

[132] 82 FR 46174, October 4, 2017.

[133] 82 FR 34206 at 34213, October 4, 2017.

[134] Because EPA's authority under the cellulosic waiver authority affords EPA more discretion to reduce volumes of advanced and total renewable fuel than the general waiver authority under an evaluation of inadequate domestic supply, EPA has evaluated the supply of advanced biofuel for purposes of a determination on the adequacy of supply without consideration of these factors.

fuel statutory volume targets, the implied statutory volume for conventional renewable fuel is 15.0 billion gallons. The total domestic production capacity of corn ethanol in the U.S. is about 16 billion gallons, and total production of denatured and undenatured ethanol from these facilities in 2016 exceeded 15 billion gallons.[135] As a result, there does not appear to be an inadequate domestic supply of renewable fuel to satisfy the implied 15 billion gallon conventional renewable fuel volume that results from full application of the cellulosic waiver authority to reduce statutory volume targets for advanced biofuel and total renewable fuel. We note that this assessment does not include imported volumes of fuel, such as conventional biodiesel, which could also be used to satisfy the volume requirements. In light of this finding, we conclude that there is not an inadequate domestic supply of volumes than can be used to meet the 15 billion gallon implied volume for conventional renewable fuel, and thus that further reductions of the 19.29 billion gallon total renewable fuel volume requirement derived through use of the cellulosic waiver authority would not appropriate when taking into account both domestic production and imports.

In the October 4 document, we discussed comments on the proposal suggesting that EPA should interpret the undefined term ''domestic'' in the phrase ''inadequate domestic supply'' to account for only volumes of renewable fuel that are produced domestically. If EPA were to adopt this interpretation, we could exclude potential imports of renewable fuel in our assessment of domestic supply but, even if we found domestic supply to be inadequate, could take factors such as potential imports and the availability of carryover RINs into account in determining the extent to which we should exercise our discretion to grant a waiver on the basis of inadequate domestic supply.[136] As described in more detail in the RTC document, stakeholders who addressed this issue provided varying perspectives on the extent to which such an interpretation would have a relevant impact on renewable fuel supply.

In light of the fact that the domestic production capacity of conventional biofuel volumes is in excess of 15 billion gallons, whether we were to exclude imported biofuels from our consideration of domestic supply would primarily impact our assessment of the supply of cellulosic biofuel and advanced biofuel volumes, not conventional renewable fuel. With respect to cellulosic biofuel, we note that the vast majority of the supply in 2018 is expected to come from domestic sources. In fact, if EPA excluded consideration of projected cellulosic biofuel imports, our projection of the available volume of cellulosic biofuel in 2018 would be reduced by only 2 million gallons or less than 1 percent of our projection that 288 million cellulosic biofuel gallons will be made available in 2018. Given the importance that Congress placed on the growth of cellulosic biofuel volumes, our projection that compliance with a 288 million gallon requirement is feasible using RINs generated in 2018, and the availability of carryover cellulosic biofuel RINs and cellulosic waiver credits for additional compliance flexibility, EPA would not exercise its discretion to lower the 288 million gallon projected cellulosic biofuel volume by 2 million gallons even if EPA were to interpret the term ''domestic supply'' to exclude imported volumes.

With respect to the available supply of advanced biofuel in 2018 in the context of an interpretation of inadequate domestic supply that excludes imports, several commenters noted the data provided by EPA in the October 4 document indicating that a significant portion of the advanced biofuel available in previous years has been from imported biofuels, particularly imported biodiesel and renewable diesel. Some commenters pointed to total domestic production capacity and feedstock availability to argue that domestic producers are capable of compensating for volumes that would not be provided through imports, so that even under an interpretation of ''domestic supply'' that excluded imports, EPA would not be justified in reducing volumes on the basis of inadequate domestic supply to a level below what was proposed. Others suggested that, without imported volumes, the domestic industry could not ramp up production quickly enough to compensate for the exclusion of imports from our analysis and provide a ''domestic supply'' equal to the proposed 2018 volume requirements.[137] We believe, based on the record before us, that there is uncertainty regarding the capability of the domestic advanced biofuel industry to compensate in 2018 for volumes that would not be provided through imports. Taking this uncertainty into account (including the distinct possibility that the domestic industry could compensate for exclusion of imports), as well as the availability of imported volumes and carryover RINs, EPA would not choose to exercise its authority to grant a waiver on the basis of inadequate domestic supply for 2018 even if it interpreted the term ''domestic supply'' to exclude imports. In light of this determination, we need not resolve at this time the interpretive issue regarding whether the term ''domestic supply'' should include consideration of imports.

B. Severe Economic Harm

The proposal and October 4 document requested comment on the possibility of further reductions in the proposed volume requirements, including on the basis of a severe economic harm. We received comments from stakeholders both in support of, and opposed to, further reductions in the advanced biofuel and/or total renewable fuel volume requirements based on a finding of severe economic harm. For instance, several obligated parties stated that the purchase of RINs to comply with the applicable standards represents a significant economic burden to their companies. Some also indicated that they are considering filing for bankruptcy. However, these commenters did not provide sufficient evidence that the purchase of RINs, as opposed to other market factors, is responsible for the company's difficult economic circumstances, or why they cannot recoup the cost of RINs through higher prices of their products, or the arguments presented were unconvincing.[138] None of the

[135] ''2017 Ethanol Industry Outlook'' by the Renewable Fuels Association indicates that 2017 nationwide production capacity is 16.0 bill gal and actual production in 2016 was 15.25 bill gal. ''US Fuel Ethanol Plant Production Capacity from EIA,'' estimates 2017 nameplate production capacity at 15.51 bill gal. In ''Ethanol Production in 2016 from EIA,'' EIA indicates that 2016 actual production was 15.45 bill gal. All documents are available in docket EPA–HQ–OAR–2017–0091.

[136] EPA's current regulations provide that qualifying imported biofuel may be used for compliance with the RFS standards; EPA's response to comments on this approach to imported biofuels is provided in the RTC document.

[137] The ''domestic supply'' of BBD for 2018 would likely be adequate to meet the 2018 standard of 2.1 billion gallons. Domestic production of BBD would need to increase by approximately 300 million gallons as compared to the 2016 production. As discussed above, EPA believes this increase is possible and received comments suggesting this volume increase could be met by domestic production. Additionally, carryover RINs and imported volumes could still be used to meet the standard. Therefore, EPA would not chose to exercise its authority to grant a waiver on the basis of inadequate domestic supply for BBD for 2018 even if it interpreted the term ''domestic supply'' to exclude imports.

[138] We further note that before exercising the general waiver authority on the basis of severe economic harm to a State, a Region or the U.S., EPA

Continued

commenters provided compelling evidence that the proposed RFS volume requirements for 2018 would be likely to cause severe economic harm to a region, State, or the U.S.[139] Further discussion of these comments can be found in the RTC document.

In addition to reviewing comments on the proposed rule and the October 4 document, EPA also reviewed market data from 2017 and previous years to see if there was evidence that the RFS standards are currently causing severe economic harm, or would be likely to cause severe economic harm in 2018. Given that the 2018 volumes generated through the maximum reduction permitted under the cellulosic waiver authority are nearly the same as the volume requirements for 2017, we considered:

1. Whether severe economic harm has occurred to date or is likely to occur in 2017, and

2. whether the economic conditions in 2018 might be expected to be substantially different than those in 2017.

To determine whether severe economic harm has occurred to date or is likely to occur in in 2017, we investigated several possible indicators. These included RIN generation for 2017 relative to 2016, refinery closures, retail fuel prices, and corn and soybean prices. Based on our investigation, we do not believe that severe economic harm has occurred thus far in 2017 to any State, region, or the U.S. as a result of the 2017 standards, or is likely occur by the end of 2017. Details of this investigation can be found in a memorandum to the docket.[140]

To determine whether the economic conditions in 2018 might be expected to be substantially different than those in 2017 in ways that could affect the economic impact of compliance with the RFS program, we investigated projections of two primary drivers of the cost of compliance: Crop-based feedstock futures prices, and projected gasoline demand. We also investigated the potential market impacts of the final 2018 standards, most specifically in terms of ethanol and biodiesel consumption.[141]

Based on the record before us, we do not believe that there is sufficient evidence to conclude that severe economic harm is occurring currently in 2017 in any State, region, or the United States, and we do not believe that market conditions in 2018 are likely to cause compliance with the applicable standards to be more economically challenging than it is in 2017. Given that the 2018 standards are very similar to the 2017 standards, then, we do not believe that further reductions in the 2018 volume requirements on the basis of severe economic harm are warranted.

C. Severe Environmental Harm

EPA received comments in response to the proposal asserting that there are negative environmental impacts that may be associated with the RFS program. A significant portion of these concerns center on feedstock production. Although we are authorized to reduce the statutory volume targets on the basis of a finding that the requirements would ''severely harm the . . . environment of a State, region, or the United States,'' commenters have not presented evidence sufficient to support a determination to make a reduction on this basis for 2018. EPA is not making reductions on this basis for 2018. EPA's response to comments related to perceived environmental harms of the RFS program is set forth in the RTC document accompanying this rule.

D. Biomass-Based Diesel Waiver Authority

The BBD waiver authority in CAA section 211(o)(7)(E)(ii) provides that if EPA determines that there is a significant renewable feedstock disruption or other market circumstance that would make the price of BBD increase significantly, then EPA shall, in consultation with the Secretary of Energy and the Secretary of Agriculture, issue an order to reduce, for up to a 60-day period, the annual volume requirement for BBD by an appropriate quantity that does not exceed 15 percent. If EPA reduces the annual volume requirement for BBD using this waiver authority, we may also reduce the applicable volume of advanced biofuel and total renewable fuel by an equal or lesser volume than the reduction in BBD. In the October 4 document we requested comment on the expected impact on the price of BBD of the expiration of the biodiesel blenders tax credit, proposed import duties on biodiesel from Argentina and Indonesia, or any other factors. We further requested comment on whether any expected impacts should be considered significant for the purposes of the BBD waiver authority.

To investigate whether a reduction in the 2018 BBD volume requirement would be warranted under CAA section 211(o)(7)(E)(ii), we considered current and historical prices of unblended biodiesel (B100), the price of blended biodiesel (in particular, B20), and BBD (D4) RIN prices. The results of this investigation are described in a memorandum to the docket.[142] EPA discussed in the October 4 document the fact that the Department of Commerce had imposed preliminary tariffs on biodiesel imported from Argentina and Indonesia, and that such tariffs could impact the price of BBD. However, these tariffs have not yet been finalized, nor has EPA observed any significant impact of the announcement of the preliminary tariffs on the price of biomass-based diesel.[143]

Based on the information before us, including the results of our investigation and information and comments submitted in response to the October 4 document, we have concluded that there is not sufficient evidence of a significant increase to the price of BBD due to feedstock disruption or other relevant market circumstances to justify reductions to the 2018 BBD volume requirement using the biomass-based diesel waiver authority.

VI. Final Biomass-Based Diesel Volume for 2019

In this section we discuss the BBD applicable volume for 2019. We are establishing this volume in advance of those for other renewable fuel categories in light of the statutory requirement in CAA section 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time establishing the BBD percentage standards that would apply to obligated parties in 2019 but

would need to consider whether a waiver that would affect the standards applicable to all obligated parties, and would take into account any negative economic impacts to farmers and biofuel producers from a waiver, would be of significant benefit to individual obligated parties facing financial difficulties.

[139] In the October 4 document, we solicited comment on EPA's prior interpretation of the term ''severe economic harm.'' As discussed in the RTC document accompanying this action, we believe that the evidence in the record would be insufficient to support a finding of severe economic harm under any reasonable interpretation of the phrase advanced by commenters, so do not find it necessary to assess changes to our interpretation of the phrase at this time.

[140] ''Assessment of waivers for severe economic harm or BBD prices for 2018,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

[141] ''Market impacts of biofuels,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

[142] ''Assessment of waivers for severe economic harm or BBD prices for 2018,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

[143] ''Assessment of waivers for severe economic harm or BBD prices for 2018,'' memorandum from David Korotney to docket EPA–HQ–OAR–2017–0091.

intend to do so in late 2018, after receiving EIA's estimate of gasoline and diesel consumption for 2019. Although the BBD applicable volume sets a floor for required BBD use, because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any BBD produced beyond the mandated 2019 BBD volume can be used to satisfy both of these other applicable volume requirements.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume specified in the statute for calendar year 2012, which is 1.0 billion gallons. The statute does not, however, establish any other numeric criteria, or provide any guidance on how the EPA should weigh the importance of the often competing factors, and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no guidance, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and especially cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. That is, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to compete with cellulosic biofuel and BBD to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met.

B. Determination of the 2019 Applicable Volume of Biomass-Based Diesel

One of the primary considerations in determining the BBD volume for 2019 is a review of the implementation of the program to date, as it affects BBD. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, and distribute BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the production and import of BBD. The number of BBD RINs generated, along with the number of RINs retired due to export or for reasons other than compliance with the annual BBD standards from 2011–2018 are shown in Table VI.B.1–1 below.

TABLE VI.B.1–1—BIOMASS-BASED (D4) RIN GENERATION AND STANDARDS IN 2011–2018

[million RINs or gallons] [144]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons)	BBD standard (RINs)
2011	1,692	72	98	1,522	800	1,200
2012	1,737	102	90	1,545	1,000	1,500
2013	2,739	124	101	2,514	1,280	1,920
2014	2,710	134	92	2,484	1,630	[b] 2,490
2015	2,796	145	32	2,619	1,730	[b] 2,655
2016	4,008	203	96	3,709	1,900	2,850
2017	N/A	N/A	N/A	N/A	2,000	3,000
2018	N/A	N/A	N/A	N/A	2,100	3,150

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons, due to rounding.

[b] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon, but generally has an equivalence value of 1.7. In 2014 and 2015 the number of RINs in the BBD Standard column is not exactly equal to 1.5 times the BBD volume standard as these standards were established based on actual RIN generation data for 2014 and a combination of actual data and a projection of RIN generation for the last three months of the year for 2015. Some of the volume used to meet the BBD standard was renewable diesel.

[144] Available BBD RINs Generated, Exported BBD RINs, and BBD RINs Retired for Non-Compliance Reasons information from EMTS.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011, 2012, 2013, and 2016. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit,[145] and favorable blending economics. The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years, as the standards for these years were finalized at the end of November 2015 and EPA's intent at that time was to set the standards for 2014 and 2015 to reflect actual BBD use. In 2016, with RFS standards established prior to the beginning of the year and the blenders tax credit in place, available BBD RINs exceeded the volume required by the BBD standard by 859 million RINs (30 percent). This indicates that in appropriate circumstances there is demand for BBD beyond the required volume of BBD.

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through the end of 2016 also support the conclusion that advanced biofuel and/or total renewable fuel standards provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[146] If, however, BBD RINs are being used by obligated parties to satisfy their advanced biofuel obligations, above and beyond the BBD standard, we would expect the prices of advanced biofuel and BBD RINs to converge.[147] Further, if BBD RINs are being used (or are expected to be used) to satisfy obligated parties' total renewable fuel obligation, above and beyond their BBD and advanced biofuel requirements we would expect the price for all three RIN types to converge.

When examining RIN price data from 2012 through September 2017, shown in Figure VI.B.2–1 below, we see that beginning in early 2013 and through September 2017 the advanced RIN price and BBD RIN prices were approximately equal. Similarly, from early 2013 through late 2016 the conventional renewable fuel and BBD RIN prices were approximately equal. This suggests that the advanced biofuel standard and/or total renewable fuel standard are capable of incentivizing increased BBD volumes beyond the BBD standard, and operated in this manner starting in 2013.[148] While final standards were not in place throughout 2014 and most of 2015, EPA had issued proposed rules for both of these years. In each year, the market response was to supply volumes of BBD that exceeded the proposed BBD standard in order to help satisfy the proposed advanced and total biofuel standards.[149] Additionally, the RIN prices in these years strongly suggests that obligated parties and other market participants anticipated the need for BBD RINs to meet their advanced and total biofuel obligations, and responded by purchasing advanced biofuel and BBD RINs at approximately equal prices. We do note, however, that in 2012 the BBD RIN price was significantly higher than both the advanced biofuel and conventional renewable fuel RIN prices. In 2012 the E10 blendwall had not yet been reached, and it was likely more cost effective for most obligated parties to satisfy the portion of the advanced biofuel requirement that exceeded the BBD and cellulosic biofuel requirements with advanced ethanol.

[145] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was authorized and applied retroactively for all of 2015 as well as through the end of 2016.

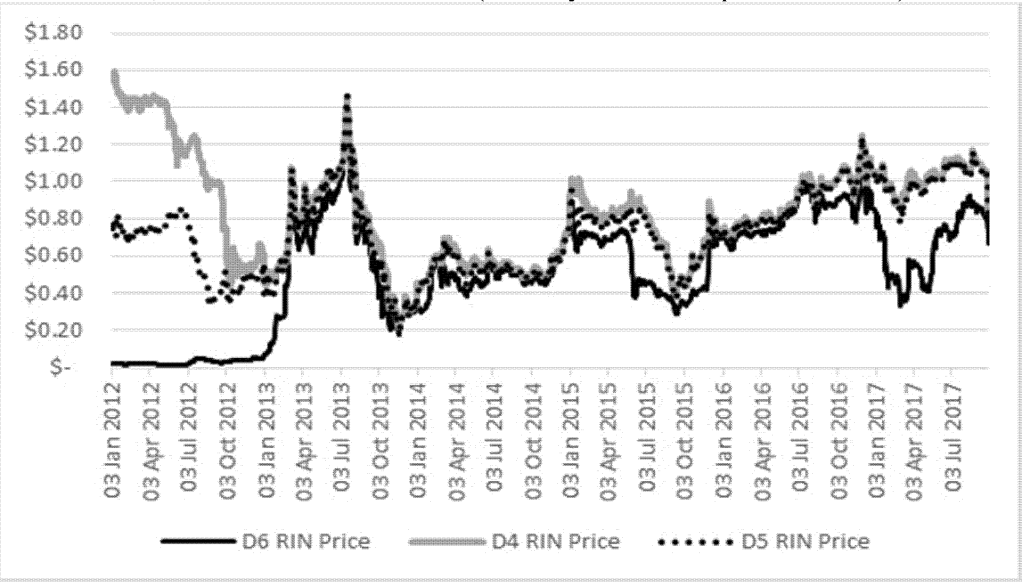
[146] This is because when an obligated party retires a BBD RIN to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[147] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

[148] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 FR 38844, 38843, July 1, 2011).

[149] EPA proposed a BBD standard of 1.28 billion gallons (1.92 billion RINs) for 2014 in our November 2013 proposed rule. The number of BBD RINs available in 2014 was 2.67 billion. EPA proposed a BBD standard of 1.70 billion gallons (2.55 billion RINs) for 2015 in our June 2015 proposed rule. The number of BBD RINs available in 2015 was 2.92 billion.

Figure VI.B.2-1
D4, D5, and D6 RIN Prices (January 2012 – September 2017)



RIN Price Source: Argus Media Group

In raising the 2013 BBD volume above the 1 billion gallon minimum mandated by Congress, the EPA sought to ''create greater certainty for both producers of BBD and obligated parties'' while also acknowledging that, ''the potential for somewhat increased costs is appropriate in light of the additional certainty of GHG reductions and enhanced energy security provided by the advanced biofuel volume requirement of 2.75 billion gallons.'' [150] Unknown at that time was the degree to which the required volumes of advanced biofuel and total renewable fuel could incentivize volumes of BBD that exceeded the BBD standard. In 2012 the available supply of BBD RINs exceeded the required volume of BBD by a very small margin (1,545 million BBD RINs were made available for compliance towards meeting the BBD requirement of 1,500 million BBD RINs). The remainder of the 2.0 billion-gallon advanced biofuel requirement was satisfied with advanced ethanol, which was largely imported from Brazil.[151] From 2012 to 2013 the statutory advanced biofuel requirement increased by 750 million gallons. If EPA had not increased the required volume of BBD for 2013, and the advanced biofuel standard had proved insufficient to increase the supply of BBD beyond the statutory minimum of 1.0 billion gallons, an additional 750 million gallons of non-BBD advanced biofuels beyond the BBD standard would have been needed to meet the advanced biofuel volume requirement.

The only advanced biofuel other than BBD available in appreciable quantities in 2012 and 2013 was advanced ethanol, the vast majority of which was imported sugarcane ethanol. EPA had significant concerns as to whether or not the supply of advanced ethanol could increase this significantly (750 million gallons) in a single year. These concerns were heightened by the approaching E10 blendwall, which increased the challenges associated with supplying increasing volumes of ethanol to the U.S. If neither BBD volumes nor advanced ethanol volumes increased sufficiently, EPA was concerned that some obligated parties might be unable to acquire the advanced biofuel RINs necessary to demonstrate compliance with their RVOs in 2013. Therefore, as discussed above, EPA increased the volume requirement for BBD in 2013 to help create greater certainty for BBD producers (by ensuring demand for their product above the 1.0 billion gallon statutory minimum) and obligated parties (by ensuring that sufficient RINs would be available to satisfy their advanced biofuel RVOs). Since 2013, however, EPA has gained significant experience implementing the RFS program. As discussed above, RIN generation data has consistently demonstrated that the advanced biofuel volume requirement, and to a lesser degree the total renewable fuel volume requirement, are capable of incentivizing the supply of BBD above and beyond the BBD volume requirement.

Finally, we note that the BBD industry in the U.S and abroad has matured since EPA first increased the required volume of BBD beyond the statutory minimum in 2013. To assess the maturity of the biodiesel industry, EPA compared information on BBD RIN generation by company from 2012 and 2016 (the most recent year for which complete RIN generation is available). In 2012, the annual average RIN generation per company producing BBD was about 11 million RINs (about 7.3 million gallons) with approximately 50 percent of companies producing less the 1 million gallons of BBD a year. The agency heard from multiple commenters during the 2012 and 2013 rulemakings that higher volume requirements for BBD would provide greater certainty for the emerging BBD industry and encourage further investment. Since that time, the BBD industry has matured in a number of critical areas, including growth in the size of companies, the consolidation of the industry, and more stable funding and access to capital. In 2012, the BBD industry was characterized by smaller companies with dispersed market share. By 2016, the average BBD RIN generation per company had climbed to almost 33 million RINs (22 million gallons) annually, a 3-fold increase. Only 27 percent of the companies produced less than 1 million gallons of BBD.

We are conscious of public comments claiming that BBD volume requirements that are a significant portion of the

[150] 77 FR 59458, 59462 (September 27, 2012).

[151] 594 million advanced ethanol RINs were generated in in 2012.

advanced volume requirements effectively dis-incentivize the future development of other promising advanced biofuel pathways. A variety of different types of advanced biofuels, rather than a single type such as BBD, would positively impact energy security (*e.g.,* by increasing the diversity of feedstock sources used to make biofuels, thereby reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[152]

With the considerations discussed above and in Section IV.B.2 in mind, as well as our analysis of the factors specified in the statute, we are setting the applicable volume of BBD at 2.1 billion gallons for 2019. We believe this volume sets the appropriate floor for BBD, and that the volume of advanced biodiesel and renewable diesel actually used in 2019 will be driven by the level of the advanced biofuel and total renewable fuel standards that the Agency will establish for 2019. We have considered the required statutory factors in reaching our decision, as summarized in Section C, below, and in a memorandum to the docket (the ''2019 BBD docket memorandum'').[153]

We believe our final 2019 BBD volume requirement strikes the appropriate balance between providing a market environment where the development of other advanced biofuels is incentivized, while also maintaining support for the BBD industry. Based on our review of the data, and the nested nature of the BBD standard within the advanced standard, we conclude that the advance standard continues to drive the ultimate volume of BBD supplied. Given the success of the industry in the past few years, as well as the substantial increases in the BBD volume being driven by the advanced standard, we have determined that a volume requirement greater than 2.1 billion gallons for BBD in 2019 is not necessary to provide support for the BBD industry. Setting the BBD standard in this manner continues to allow a considerable portion of the advanced biofuel volume to be satisfied by either additional gallons of BBD or by other unspecified and potentially less costly types of qualifying advanced biofuels.

C. Consideration of Statutory Factors Set Forth in CAA Section 211(o)(2)(B)(ii)(I)–(VI) for 2019

As noted earlier in Section IV.B., the BBD volume requirement is nested within the advanced biofuel requirement and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement. This means that any BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. The result is that in considering the statutory factors we must consider the potential impacts of increasing or decreasing BBD in comparison to other advanced biofuels.[154] For a given advanced biofuel standard, greater or lesser BBD volume requirements do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD requirement may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement. While in recent years EPA has annually increased the BBD volume requirement, EPA is, as we proposed, maintaining the 2.1 billion gallon standard for 2019 based on our review of the statutory factors and the considerations noted above and in the 2018 BBD Docket Memorandum. In particular, as EPA noted above in section VI.B., the BBD industry is more mature, and we have increased BBD volumes significantly in recent years so that the BBD standard is now over twice the minimum statutory volume required in CAA section 211(o)(2)(B)(i). In these circumstances we do not believe that an additional increase in the required BBD required volume is necessary to support the industry in 2019.

Consistent with our approach in setting the final BBD volume requirement for 2018, EPA's primary assessment of the statutory factors for the 2019 BBD applicable volume is that because the BBD requirement is nested within the advanced biofuel volume requirement, we expect that the 2019 advanced volume requirement, when set next year, will determine the level of BBD production and imports that occur in 2019.[155] Therefore, EPA continues to believe that the same overall volume of BBD would likely be supplied in 2019 even if we were to mandate a somewhat lower or higher BBD volume for 2019 in this final rule. Thus, we do not expect our 2019 BBD volume requirement to result in a difference in the factors we consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI).

As an additional supplementary assessment, we have considered the potential impacts of selecting an applicable volume of BBD other than 2.1 billion gallons in 2019. Setting a requirement higher or lower than 2.1 billion gallons in 2019 would only be expected to impact BBD volumes on the margin, protecting to a greater or lesser degree BBD from competition with other potential advanced biofuels. In this supplementary assessment we have considered all of the statutory factors found in CAA section 211(2)(B)(ii), and as described in the 2019 BBD docket memorandum, our assessment does not appear, based on available information, to provide a reasonable basis for setting a higher or lower volume requirement for BBD than 2.1 billion gallons for 2019.

Overall and as described in the 2019 BBD docket memorandum, we have determined that both the primary assessment and the supplemental assessment of the statutory factors specified in CAA section 211(o)(2)(B)(ii)(I)–(VI) for the year 2019 does not provide significant support for setting the BBD standard at a level higher or lower than 2.1 billion gallons in 2019.

VII. Percentage Standards for 2018

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party meets the percentages by acquiring and retiring an appropriate number of RINs, then the amount of renewable fuel, cellulosic biofuel, BBD, and advanced biofuel used will meet the applicable volume requirements on a nationwide basis.

[152] All types of advanced biofuel, including BBD, must achieve lifecycle GHG reductions of at least 50 percent.

[153] ''Memorandum to docket: Draft Statutory Factors Assessment for the 2019 Biomass-Based Diesel (BBD) Applicable Volumes.'' See Docket EPA–HQ–OAR–2017–0091.

[154] While excess BBD production could also displace conventional renewable fuel under the total renewable standard, as long as the BBD applicable volume is significantly lower than the advanced biofuel applicable volume our action in setting the BBD applicable volume is not expected to displace conventional renewable fuel under the total renewable standard, but rather other advanced biofuels.

[155] Even though we are not setting the 2019 advanced biofuel volume requirement as part of this rulemaking, we expect that the 2019 advanced volume requirement will be considerably higher than the 2019 BBD requirement, consistent with past practice and, therefore, that the BBD volume requirement for 2019 would not be expected to impact the volume of BBD that is actually produced and imported during the 2019-time period.

Sections III through V provide our rationale and basis for the volume requirements for 2018.[156] The volumes used to determine the percentage standards are shown in Table VII–1.

TABLE VII–1—VOLUMES FOR USE IN SETTING THE 2018 APPLICABLE PERCENTAGE STANDARDS

[Billion gallons]

Cellulosic biofuel	0.288
Biomass-based diesel [a]	2.10
Advanced biofuel	4.29
Renewable fuel	19.29

[a] Represents physical volume.

For the purposes of converting these volumes into percentage standards, we generally use two decimal places to be consistent with the volume targets as given in the statute, and similarly two decimal places in the percentage standards. However, for cellulosic biofuel we use three decimal places in both the volume requirement and percentage standards to more precisely capture the smaller volume projections and the unique methodology that in some cases results in estimates of only a few million gallons for a single producer.

A. Calculation of Percentage Standards

To calculate the percentage standards, we are following the same methodology for 2018 as we have in all prior years. The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA, and include projections of ethanol and biodiesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of ethanol and biodiesel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

As specified in the RFS2 final rule,[157] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. The formula specified in the regulations for calculation of the BBD percentage standard is based on biodiesel-equivalence, and thus assumes that all BBD used to satisfy the BBD standard is biodiesel and requires that the applicable volume requirement be multiplied by 1.5. However, BBD often contains some renewable diesel, and a gallon of renewable diesel typically generates 1.7 RINs.[158] In addition, there is often some renewable diesel in the conventional renewable fuel pool. As a result, the actual number of RINs generated by biodiesel and renewable diesel is used in the context of our assessing reasonably attainable volumes for purposes of deriving the applicable volume requirements and associated percentage standards for advanced biofuel and total renewable fuel, and likewise in obligated parties' determination of compliance with any of the applicable standards. While there is a difference in the treatment of biodiesel and renewable diesel in the context of determining the percentage standard for BBD versus determining the percentage standard for advanced biofuel and total renewable fuel, it is not a significant one given our approach to determining the BBD volume requirement. Our intent in setting the BBD applicable volume is to provide a level of guaranteed volume for BBD, but as described in Section VI.B, we do not expect the BBD standard to be binding. That is, we expect that actual supply of BBD, as well as supply of conventional biodiesel and renewable diesel, will be driven by the advanced biofuel and total renewable fuel standards.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries[159] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or based on an EPA determination of ''disproportionate economic hardship'' on a case-by-case basis in response to small refinery petitions. In reviewing petitions, EPA, in consultation with the Department of Energy, evaluates whether the small refinery has demonstrated either disproportionate impacts or viability impairment, and may grant refineries exemptions upon demonstration of either criterion.

EPA has granted exemptions pursuant to this process in the past. However, at this time no exemptions have been approved for 2018, and therefore we have calculated the percentage standards for 2018 without any adjustment for exempted volumes. EPA is maintaining its approach that any exemptions for 2018 that are granted after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2018.[160]

C. Final Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and exemptions for small refineries. The values of all the variables used for this final rule are shown in Table VII.C–1.[161]

[156] The 2018 volume requirement for BBD was established in the 2017 final rule.

[157] See 75 FR 14670 (March 26, 2010).

[158] Although in some cases a gallon of renewable diesel generates either 1.5 or 1.6 RINs.

[159] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

[160] Further discussion of this issue can be found in the Response to Comments document in the docket for this action.

[161] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE because petroleum based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 29, 2016 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

TABLE VII.C–1—VALUES FOR TERMS IN CALCULATION OF THE 2018 STANDARDS [162]

[Billion gallons]

Term	Description	Value
RFV_{CB}	Required volume of cellulosic biofuel	0.288
RFV_{BBD}	Required volume of biomass-based diesel	2.10
RFV_{AB}	Required volume of advanced biofuel	4.29
RFV_{RF}	Required volume of renewable fuel	19.29
G	Projected volume of gasoline	143.22
D	Projected volume of diesel	54.76
RG	Projected volume of renewables in gasoline	14.71
RD	Projected volume of renewables in diesel	2.53
GS	Projected volume of gasoline for opt-in areas	0
RGS	Projected volume of renewables in gasoline for opt-in areas	0
DS	Projected volume of diesel for opt-in areas	0
RDS	Projected volume of renewables in diesel for opt-in areas	0
GE	Projected volume of gasoline for exempt small refineries	0.00
DE	Projected volume of diesel for exempt small refineries	0.00

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were provided by EIA on October 11, 2017, as required in the statute at CAA section 211(o)(3)(A).

Using the volumes shown in Table VII.C–1, we have calculated the percentage standards for 2018 as shown in Table VII.C–2.

TABLE VII.C–2—FINAL PERCENTAGE STANDARDS FOR 2018

Cellulosic biofuel	0.159
Biomass-based diesel	1.74
Advanced biofuel	2.37
Renewable fuel	10.67

VIII. Administrative Actions

A. Assessment of the Domestic Aggregate Compliance Approach

The RFS regulations specify an ''aggregate compliance'' approach for demonstrating that planted crops and crop residue from the U.S. complies with the ''renewable biomass'' requirements that address lands from which qualifying feedstocks may be harvested.[163] In the 2010 RFS2 rulemaking, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. The regulations specify, therefore, that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not undertake individual recordkeeping and reporting related to documenting that their feedstocks come from qualifying lands, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded.

In the 2010 RFS2 rulemaking, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

The Aggregate Compliance methodology provided for the exclusion of acreage enrolled in the Grassland Reserve Program (GRP) and the Wetlands Reserve Program (WRP) from the estimated total U.S. agricultural land. However, the 2014 Farm Bill terminated the GRP and WRP as of 2013 and USDA established the Agriculture Conservation Easement Program (ACEP) with wetlands and land easement components. The ACEP is a voluntary program that provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements (ACEP–ALE) component, USDA helps Indian tribes, state and local governments, and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements (ACEP–WRE) component, USDA helps to restore, protect and enhance enrolled wetlands. The WRP was a voluntary program that offered landowners the opportunity to protect, restore, and enhance wetlands on their property. The GRP was a voluntary conservation program that emphasized support for working grazing operations, enhancement of plant and animal biodiversity, and protection of grassland under threat of conversion to other uses.

USDA and EPA concur that the ACEP–WRE and ACEP–ALE represent a continuation in basic objectives and goals of the original WRP and GRP. Therefore, in preparing this year's assessment of the total U.S. acres of agricultural land, the acreage enrolled in the ACEP–WRE and ACEP–ALE was excluded.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 376 million acres in 2017, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking, with the GRP and WRP substitution as noted above. Specifically, we started with FSA crop history data for 2017, from which we derived a total estimated acreage of 379,220,752 acres. We then subtracted the ACEP–ALE and ACEP–WRE enrolled areas by the end of Fiscal Year 2017, 2,777,887 acres, to yield an estimate of 376,442,865 acres or approximately 376 million acres of U.S. agricultural land in 2017. The USDA data used to make this derivation can be found in the docket to this rule.[164]

[162] See ''Calculation of final % standards for 2018'' in docket EPA–HQ–OAR–2017–0091.

[163] 40 CFR 80.1454(g).

[164] As in 2016, USDA again provided EPA with 2017 data from the discontinued GRP and WRP programs. Given this data, EPA estimated the total U.S. agricultural land both including and omitting the GRP and WRP acreage. In 2017, combined land under GRP and WRP totaled 349,146 acres. Subtracting the GRP, WRP, ACEP–WRE, and ACEP–ALE acreage yields an estimate of 376,093,719 acres

B. Assessment of the Canadian Aggregate Compliance Approach

The RFS regulations specify a petition process through which EPA may approve the use of an aggregate compliance approach for planted crops and crop residue from foreign countries.[165] On September 29, 2011, EPA approved such a petition from the Government of Canada.

The total agricultural land in Canada in 2017 is estimated at 117.8 million acres. This total agricultural land area includes 95.5 million acres of cropland and summer fallow, 12.5 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in EPA's response to Canada's petition. The data used to make this calculation can be found in the docket to this rule.

C. RIN Market Operation

Some stakeholders have expressed concerns that the current regulatory provisions related to RIN trading render the RFS program vulnerable to market manipulation. The EPA takes such issues seriously. The RIN system was originally designed with an open trading market in order to maximize its liquidity and ensure a robust marketplace for RINs. However, the EPA is interested in assessing whether and how the current trading structure provides an opportunity for market manipulation. To that effect, the EPA sought comment and input on this issue, including on potential changes to the RIN trading system that might help address these concerns. We received comments from stakeholders suggesting a number changes to the RIN trading system. While EPA received many comments that are helpful to highlight opportunities for improvement to the RIN system, we are not in a position to make significant changes to the RIN system at this time. However, we intend to explore these suggested changes and are open to suggestions for making changes in the future that are within our authority and would help to improve the function and liquidity of the RIN system.

Separate from evaluating the RIN trading options in the RFS program, the EPA is working with appropriate market regulators to analyze targeted concerns of some stakeholders. Although the EPA has not seen evidence of manipulation in the RIN market, the EPA is not a commodity market regulatory agency, and thus we do not have expertise in this field. Claims of market manipulation prompted the EPA to execute a memorandum of understanding (MOU) with the U.S. Commodity Futures Trading Commission (CFTC), which has the authority and expertise to investigate such claims.

In the meantime, the EPA has continued to explore additional ways to increase program transparency in order to support the program and share data with all stakeholders. The EPA already publishes RFS program data on our Web site, including data related to RIN generation, sales and holdings, and annual compliance.[166] We are interested in providing more information, to the extent consistent with our obligations to protect confidential business information (CBI). The EPA sought comment on specific data elements and posting frequency that stakeholders believe would be useful to help with market transparency and liquidity. We received comments from stakeholders suggesting a number of different types of data that commenters suggested would be useful to the industry and public. The EPA will need to further evaluate each of these suggestions to determine which information we can be post and, if so, whether we can post it at the frequency that was suggested by the commenters. Our decisions with respect to these suggestions must necessarily strike a balance between achieving the greatest transparency possible, while working within the limitations of our authority and resources (including technology systems), and protecting information that is claimed as CBI.

IX. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on July 21, 2017 (82 FR 34206), and we also held a public hearing on August 1, 2017, at which many parties provided both verbal and written testimony. All comments received, both verbal and written, are available in Docket ID No. EPA–HQ–OAR–2017–0091 and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble and in the accompanying Response to Comment document, which is available in the docket for this action.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of illustrative costs associated with this action. This analysis is presented in Section IV.E of this preamble.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in EPA's analysis of the illustrative costs associated with this action. This analysis is presented in Section IV.E of this preamble.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0637 and 2060–0640. The final standards will not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. We have evaluated the impacts of this final rule on small entities from two perspectives: As if the 2018 standards

or approximately 376 million total acres of U.S. agricultural land in 2017. Omitting the GRP and WRP data yields approximately the same 376 million acres of U.S. agricultural land in 2017.

[165] 40 CFR 80.1457.

[166] For public data on the RFS and other EPA fuel programs, refer to: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-and-registration-lists-fuel-programs.*

were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the standards as if they were a standalone action separate and apart from the original rulemaking which established the RFS2 program, then the standards could be viewed as increasing the advanced and total renewable fuel volumes required of obligated parties by 10 million gallons between 2017 and 2018. To evaluate the impacts of the volume requirements on small entities relative to 2017, EPA has conducted a screening analysis [167] to assess whether it should make a finding that this action would not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule would not be significant. EPA has reviewed and assessed the available information, which shows that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[168] [169] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs were not recovered by obligated parties, and we used the maximum values of the illustrative costs discussed in Section IV.E of this preamble and the gasoline and diesel fuel volume projections and wholesale prices from the October 2017 version of EIA's Short-Term Energy Outlook, and current wholesale fuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales.

While the screening analysis described above supports a certification that this rule would not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule (75 FR 14670, March 26, 2010), which was the rule that implemented the entire program required by the Energy Independence and Security Act of 2007 (EISA 2007). As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, EPA conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, it was estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this final rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. This rule establishes the 2018 advanced and total renewable fuel volume requirements at levels 10 million gallons higher than the 2017 volume requirements, and significantly below the statutory volume targets. This exercise of EPA's waiver authority reduces burdens on small entities, as compared to the burdens that would be imposed under the volumes specified in the Clean Air Act in the absence of waivers—which are the volumes that we assessed in the screening analysis that we prepared for implementation of the full program. Regarding the BBD standard, we are maintaining the volume requirement for 2019 at the same level as 2018. While this volume is an increase over the statutory minimum value of 1 billion gallons, the BBD standard is a nested standard within the advanced biofuel category, which we are significantly reducing from the statutory volume targets. As discussed in Section VI, we are setting the 2019 BBD volume requirement at a level below what is anticipated will be produced and used to satisfy the reduced advanced biofuel requirement. The net result of the standards being established in this action is a reduction in burden as compared to implementation of the statutory volume targets, as was assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, as we realize that there may be cases in which a small entity may be in a difficult financial situation and the level of assistance afforded by the program flexibilities is insufficient. For such circumstances, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[170] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) that allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that compliance with the requirements of the RFS program would result in the refinery experiencing a ''disproportionate economic hardship.'' EPA regulations

[167] ''Screening Analysis for the Final Renewable Fuel Standard Program Renewable Volume Obligations for 2018,'' memorandum from Dallas Burkholder, Nick Parsons, and Tia Sutton to EPA Air Docket EPA–HQ–OAR–2017–0091.

[168] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[169] Knittel, Christopher R., Ben S. Meiselman, and James H. Stock. ''The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuel Standard.'' Working Paper 21343. NBER Working Paper Series. Available online at *http://www.nber.org/papers/w21343.pdf.*

[170] See CAA section 211(o)(9)(B).

provide similar relief to small refiners that are not eligible for small refinery relief (see 40 CFR 80.1442(h)). EPA evaluates these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, EPA consults with the U.S. Department of Energy, and takes the findings of DOE's 2011 Small Refinery Study and other economic factors into consideration. EPA successfully implemented these provisions by evaluating petitions for exemption from 14 small refineries for the 2016 RFS standards.[171]

Given that this final rule would not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets, would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to successfully implement), and available information shows that the impact on small entities from implementation of this rule would not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program, we have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This final rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2018, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and lowering lifecycle GHG emissions of transportation fuel.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this final rule comes from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: November 30, 2017.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Section 80.1405 is amended by adding paragraph (a)(9) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(9) *Renewable Fuel Standards for 2018.*

(i) The value of the cellulosic biofuel standard for 2018 shall be 0.159 percent.

(ii) The value of the biomass-based diesel standard for 2018 shall be 1.74 percent.

(iii) The value of the advanced biofuel standard for 2018 shall be 2.37 percent.

(iv) The value of the renewable fuel standard for 2018 shall be 10.67 percent.

* * * * *

[FR Doc. 2017–26426 Filed 12–11–17; 8:45 am]

BILLING CODE 6560–50–P

[171] EPA is currently evaluating 2 additional 2016 petitions, bringing the total number of petitions for 2016 to 16.

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Part III

The President

Proclamation 9684—National Pearl Harbor Remembrance Day, 2017

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9684 of December 7, 2017

National Pearl Harbor Remembrance Day, 2017

By the President of the United States of America

A Proclamation

On National Pearl Harbor Remembrance Day, we honor those who perished in defense of our homeland and the veterans who selflessly answered the call to freedom during World War II. In our Nation's history, few events have been as pivotal as the ''date which will live in infamy.''

Seventy-six years ago today, on the morning of December 7, 1941, Japanese air and naval forces carried out an unprovoked surprise attack on American military installations in Oahu, Hawaii. Horrific sounds of war shattered that peaceful Sunday morning, and our Nation was forever changed. More than 2,400 Americans lost their lives, and more than 1,000 service members and civilians were wounded in the attack. This horrific act of aggression galvanized the Nation and propelled us into World War II. Americans would not awaken to another peaceful dawn for nearly 4 long years.

In our darkest hours, the greatness of America emerged. Throughout the long and difficult war, our citizens remained courageous and resilient. Thousands answered the call to arms, left family and loved ones behind, and embarked on long and onerous journeys to fight America's enemies abroad. On the home front, American industry, ingenuity, and innovation increased our warfighting capacity and helped turn the tide in both the Atlantic and the Pacific theaters. The war effort motivated soldier and civilian alike. Families and communities came together, sacrificing personal comfort and prosperity for the greater good. Our country also solidified partnerships with like-minded nations committed to the promise of freedom. The spirit and soul of our Nation were tested in the fires of adversity, and we emerged even more determined, confident, and resolute.

The USS Arizona Memorial in Honolulu, Hawaii, is a sacred resting place for many of the ship's 1,177 sailors and Marines who perished on that fateful December morning. Even though these American patriots are entombed in a watery grave within the sunken hull of a battleship, their names are etched into the marble wall in the structure above. Just last month the First Lady and I had the distinct honor of visiting this hallowed site to pay our respects to the American heroes that were taken from us on that infamous day. The rusted wreckage is a haunting and sober reminder of the sacrifice of these heroes and their families, while the iconic, striking white memorial stands as a somber reminder of what we lost and also what we must fight to preserve.

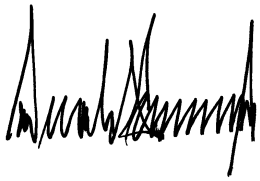
Today, a new generation of brave men and women in uniform stand ready to oppose any threat to our Nation and the civilized world. Though the decades have passed, we are careful to never forget the lessons of Pearl Harbor. Our Armed Forces must be strong and vigilant, prepared to fight and preserve all we hold dear. It is our greatest obligation—our most solemn duty—to ensure our Nation remains the land of the free and the home of the brave. The day after the attack on Pearl Harbor, President Franklin Roosevelt told the Congress that ''With confidence in our Armed Forces—with the unbounding determination of our people—we will gain the inevitable triumph.'' That confidence and determination is undiminished today as we combat the ever-changing threats to freedom.

On this National Pearl Harbor Remembrance Day, we pray for all who died on the island of Oahu that dreadful Sunday morning, and for those who perished around the world in the battles of World War II. May we never forget their bravery, their selflessness, and their sacrifice for the noble causes of liberty and peace.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim December 7, 2017, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn day of remembrance and to honor our military, past and present, with appropriate ceremonies and activities. I urge all Federal agencies and interested organizations, groups, and individuals to fly the flag of the United States at half-staff in honor of those American patriots who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



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